Supreme Court, U.S.
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No.

IN THE
Supreme Court of the United States

BEDROC LIMITED, LLC; WESTERN ELITE, INC.,

Petitioners,

v.

UNITED STATES OF AMERICA; GALE A. NORTON; UNITED STATES BUREAU OF LAND MANAGEMENT; CURTIS TUCKER; UNITED STATES DEPARTMENT OF THE INTERIOR,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Pittman Underground Water Act of 1919 (the "Pittman Act") authorized patents of up to 640 acres of land in Nevada to applicants who successfully developed subterranean water sources, provided that such patents reserved to the United States "all the coal and other valuable minerals." Citing *Watt v. Western Nuclear*, 462 U.S. 36 (1983), the Ninth Circuit ruled that the Pittman Act reserved *all* sand and gravel as "valuable minerals," regardless of whether the materials at any given property had economic value at the time the land was patented.

The questions presented are:

(1) Whether the reservation of "valuable minerals" includes all common materials (such as sand and gravel), without regard to whether the materials located on particular lands were "valuable minerals" at the time of the patent; and

(2) If *Watt v. Western Nuclear* calls for the application of a *per se* rule regarding the reservation (or non-reservation) of common materials, whether congressional intent would be better served by a rule that common materials are *not* reserved to the government as "valuable minerals."

RULE 29.6 STATEMENT

BedRoc Limited, LLC, is a Nevada limited liability company that has no parent corporation. No publicly held company owns a 10% or more equity interest in BedRoc Limited, LLC.

Western Elite, Inc. is a Nevada corporation. Western Elite has no parent corporation and no publicly held company holds 10% or more of Western Elite's stock.

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PETITION FOR A WRIT OF CERTIORIARI

BedRoc Limited, LLC, and Western Elite, Inc., respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, 1a–21a) is reported at 314 F.3d 1080. The opinion of the United States District Court for the District of Nevada (App. B, 22a–38a) is reported at 50 F. Supp. 2d 1001. The opinion of the Interior Board of Land Appeals (App. C, 39a–63a) is reported at 140 IBLA 295 (1997).

JURISDICTION

The judgment of the court of appeals was entered on December 30, 2002. On March 21, 2003, Justice O'Connor granted an extension of time to file this petition to April 30, 2003. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Pittman Underground Water Act of 1919, 78 Stat. 293-95 (repealed 1964); Section 9 of the Stock-Raising Homestead Act of 1916, 39 Stat. 862 (repealed 1976); and Section 3 of the Surface Resources Act of 1955 (the Common Varieties Act), 30 U.S.C. § 611, are set forth at App. D, E, and F (64a-71a).

STATEMENT

Factual Background. Enacted in 1919, the Pittman Underground Water Act (the "Pittman Act") was part of Congress's decades-long effort to encourage settlement of the American West through land grants to those who would

lead the way. *See* 41 Stat. 293-95 (1919). Focusing on the State where the various Homestead Acts had been least successful due to inadequate surface water resources, the Pittman Act authorized permits for individuals to explore for subterranean waters on "unreserved, unappropriated, non-mineral, nontimbered public lands ... in the State of Nevada." *Id.* Prospectors who discovered and successfully developed an underground water source could obtain patents for up to 640 acres of land. Such patents reserved to the United States "all the coal and other valuable minerals," which in turn would be "subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal." Pittman Act § 8, App. 67a.

Very few prospectors rose to the formidable challenge, and the Pittman Act was generally viewed as a failure when it was repealed in 1964. *See* 78 Stat. 389 (1964). Newton and Mabel Butler (the "Butlers"), however, had succeeded in developing underground water and, as a result, had secured a patent for 560 acres in Lincoln County, Nevada. *See* Ninth Circuit Excerpts of Record ("ER") at 33-36. The United States Department of the Interior ("DOI") certified the Butler property as non-mineral and available for disposition under the Pittman Act in 1938, and the Butler's patent issued on March 12, 1940. *See* ER 33-34, 36-41.

Common sand and gravel were abundant on the property and in the area generally when the Butler patent issued in 1940, but there was no market for such materials due to the remote location. *See* ER 34-35. Ultimately, expansion of the city of Las Vegas in the 1990s created a market for gravel in the area, and the lessee of a successor owner began a sand and gravel operation. *See* ER 34-35, 37. In February 1993, Earl Williams purchased the property and continued

the extraction of sand and gravel. Petitioner BedRoc Limited, LLC, ("BedRoc") acquired the property on July 27, 1995, and has continued the sand and gravel operation since that time.[1]

Procedural History. On March 26, 1993, the Bureau of Land Management ("BLM") issued a trespass notice to then-owner Earl Williams, claiming that sand and gravel on the property was reserved to the United States. *See* Ninth Circuit Supplemental Excerpts of Record ("SER") 96-97. BLM issued a decision in April 1993, citing this Court's decision in *Watt v. Western Nuclear, Inc.*, 462 U.S. 36 (1983) and finding Williams in trespass. SER 98. The Interior Board of Land Appeals ("IBLA") affirmed the BLM decision in October 1997. *Earl Williams*, 140 IBLA 295 (1997).

Jurisdiction in the district court was based on 28 U.S.C. § 1331. BedRoc and Williams filed a combined action on July 2, 1998, seeking review of the IBLA decision and to quiet title to the sand and gravel. ER 1. Western Elite, Inc., which had acquired a portion of the property from BedRoc, also joined the suit to quiet title. On cross-motions for summary judgment, the district court ruled that sand and gravel are "other valuable minerals" reserved to the United States under the Pittman Act as a matter of law. App. 23a. The Ninth Circuit affirmed.

The Ninth Circuit's Opinion. The Ninth Circuit ruled that the phrase "valuable minerals" in the Pittman Act is

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[1] In order to continue operations pending final determination of ownership of the sand and gravel, BedRoc entered into an agreement pursuant to which it has paid BLM's claimed royalties into an escrow account. ER 48.

ambiguous as to whether it includes sand and gravel. App. 8a. Turning to the statutory purpose and legislative history, the court concluded that Congress intended the Pittman Act mineral reservation "to serve the same purposes and have the same scope as the [mineral] reservation under the [Stock-Raising Homestead Act of 1916 ("SRHA")]" addressed by this Court in *Western Nuclear*. App. 12a. The Ninth Circuit thus reasoned that "the mineral reservation is to be read broadly in light of the agricultural purpose of the grant itself, and in light of Congress's equally clear purpose to retain subsurface resources . . . for separate disposition and development." App. 12a (quoting *United States v. Union Oil Co. of California*, 549 F.2d 1271, 1279 (9th Cir.), *cert. denied*, 434 U.S. 930 (1977) which also concerned an SRHA reservation).

The court rejected BedRoc's contention that ordinary sand and gravel could only be reserved as "valuable minerals" if it had economic value at the time of the patent. App. 18a. Instead, citing *Western Nuclear*, the Ninth Circuit ruled that *all* sand and gravel was reserved to the United States. App. 19a.

REASONS FOR GRANTING THE PETITION

This petition addresses the Ninth Circuit's over-broad construction of this Court's 1983 ruling in *Watt v. Western Nuclear* that a gravel deposit in Wyoming was reserved to the United States under the Stock-Raising Homestead Act of 1916 ("SRHA"). Although this case and *Western Nuclear* involve two different land grant statutes, both now defunct, the Ninth Circuit concluded that their mineral reservations are coextensive. The Ninth Circuit misconstrued *Western Nuclear*, however, to establish an expansive and improvident rule for construing the rights of Western property owners who hold title subject to statutory mineral reservations in

favor of the United States. As described below, even when the term is afforded its broadest potential interpretation consistent with basic mineral law, common materials such as sand and gravel are regarded as "minerals" only when they have economic value at the time of the patent.

The decision below holds that general statutory mineral reservations (*e.g.*, statutory reservations of "coal and all other minerals" or "coal and all other valuable minerals") encompass any common mineralogical materials that may have "utility." Moreover, according to the Ninth Circuit, *all* such materials are reserved, regardless of whether the particular substances at issue in any given land patent met the definition of "minerals" (let alone "valuable minerals") at the time of the conveyance. The proper rule, however, was acknowledged in *Western Nuclear*: Common materials can be identified as "minerals" only if they have economic value. Unless economic value exists at the time of the conveyance, common materials thus are not within the scope of "minerals" reserved.

The court's interpretation of *Western Nuclear* offends long-standing and fundamental principles of mining and property law. In addition, it renders the Butlers and each of their successors in title the functional equivalent of tenant farmers, granted little more than the privilege of tending lands actually owned by the government. Their land and the land of other similarly situated "surface owners" is not theirs to use as they see fit (except for ranching and farming) and is subject to entry in futuro by anyone the United States might authorize to dig up and remove the very materials that make up most of the land. Thus, the current "owners" of tens of millions of acres of Western lands will be something

considerably less than owners in any traditional sense unless the decision below is reversed.[2]

With respect to issues such as those presented in this case, involving the scope of federal land patents that affect millions of acres of Western lands, this Court is the primary source of governing law. The Court's role is as central on this matter of basic property rights as is that of the state courts dealing with basic state law property issues. This is not an area properly left to Congress, as the Acts in question have been repealed. Particularly where this Court's prior decision is the source of confusion, the Court should exercise its certiorari jurisdiction to ensure that the essential rights of so many land owners are not improperly narrowed.

I. The Ninth Circuit Has Misconstrued This Court's Decision in *Western Nuclear*.

In *Watt v. Western Nuclear*, this Court addressed the mineral reservation in Section 9 of the SRHA, which reserved "all the coal and other minerals" in SRHA-patented lands.[3] The land at issue was patented in 1926 and was

[2] Roughly 33 million acres of patented lands were directly affected by the *Western Nuclear* decision. *See* 462 U.S. at 42. The ruling below demonstrates that the Ninth Circuit's erroneous interpretation of *Western Nuclear* will govern property rights not just on those lands, but on all lands patented under similar general statutory mineral reservations. One leading treatise identifies *thirteen* such federal statutes requiring the reservation of all minerals in certain conveyances by the United States. *See* 3 Rocky Mtn. Min. Law Found., AMERICAN LAW OF MINING § 9.05[2] (2d ed. 2002).

[3] SRHA Section 9, 39 Stat. 862 (repealed 1976), is produced at App. E, 69a-70a. The mineral reservation provisions of the SRHA and the Pittman Act are identical, except for the Pittman Act's use of the phrase "other valuable minerals" instead of "other minerals." *See* App. 67a.

acquired by Western Nuclear, Inc., in 1975 for the purpose of extracting gravel from an "old gravel pit." 475 F. Supp. 654, 655 (D. Wyo. 1979). BLM challenged the gravel extraction, and the IBLA ruled that "*gravel in a valuable deposit* is a mineral reserved to the United States in patents issued under the [SRHA]." 35 IBLA 146, 165 (1978) (emphasis added). The district court agreed, but the Tenth Circuit reversed.

The Tenth Circuit found that gravel was not a "mineral" under the SRHA largely because, at the time of enactment, DOI had ruled that such common substances were not "minerals" under the general mining laws. *See* 664 F.2d 234, 239-40 (10th Cir. 1981) (citing *Zimmerman v. Brunson*, 39 Pub. Lands Dec. 310 (1910)). Thus, the Tenth Circuit found that Congress in 1916 likely did not understand "minerals" to include common gravel. *Id.* at 240. In addition, the court reasoned that reserving common substances such as rocks, stones, and gravel to the government would make SRHA patentees the owners of "only the dirt, and little or nothing more," thus defeating the purpose of the grant. *Id.* at 242.

This Court granted the United States' petition for certiorari "[i]n view of the importance of the case to the administration of the more than 33 million acres of land patented under the SRHA." 462 U.S. at 42. In briefing, the United States argued that the SRHA mineral reservation was "coextensive with the class of minerals subject to location under the general mining law,[4] which restricts development

[4] The phrase "general mining laws" refers primarily to the Mining Act of 1872, as amended, currently codified at 30 U.S.C. § 22 *et seq.* These laws govern the disposal of "all valuable mineral deposits in lands belonging to the United States." 30 U.S.C. § 22.

to 'valuable mineral deposits.'"[5] The United States explained that "what this test means is that the *mineral reservation embraces only deposits of gravel and other mineral materials which are commercially exploitable and would justify a mineral entry*." Pet. Br. § II.A.2. (emphasis added). The government argued that DOI's *exclusion* of common materials from treatment as "minerals" from 1910 to 1929 was an aberration and that the customary "marketability" test instead should be the benchmark for identifying reserved gravel deposits. *Id.* § III.A.2. Western Nuclear, on the other hand, contended that the government had never argued or introduced evidence on marketability in the lower courts. Western Nuclear thus asked that the Court *not consider* the issue, but only affirm that gravel was not a "mineral" at all within the meaning of the SHRA. Res. Br. § I-II.

The Court reversed the Tenth Circuit in a 5 to 4 ruling, finding that Congress's intended meaning of "minerals" in 1916 was not clear. 462 U.S. at 46-47; *id.* at 65-66 (dissenting opinion by Justices Powell, Rehnquist, Stevens, and O'Connor).[6] Turning to the purpose of the SRHA, the Court found that "Congress' [sic] underlying purpose in severing the surface estate from the mineral estate was to facilitate the concurrent development of both surface and

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[5] *Western Nuclear*, Pet. Br., Summary § II.A.2. Thus, according to the government, "not every deposit of gravel will warrant interference with the homesteader's surface estate; only those which – in light of the abundance of the resource, the quality of the gravel, the condition of the market, and the distance from buyers – can be extracted at a profit will do so." *Id.*

[6] The dissenters found that the common and legal understanding of "minerals" at the time of enactment was clear and did *not* include gravel.

subsurface resources." *Id.* at 47. Thus, "[w]hile Congress expected that homesteaders would use the surface of SRHA lands for stock-raising and raising crops, it sought to ensure that *valuable subsurface resources* would remain subject to disposition by the United States. . . ." *Id.* (emphasis added).

Based on this statutory purpose, the Court ruled that "minerals" reserved under the SRHA should include:

> . . . substances that are mineral in character (*i.e.*, that are inorganic), that can be removed from the soil, that can be used for commercial purposes, and that there is no reason to suppose were intended to be included in the surface estate.

462 U.S. at 53. Applying this definition, the Court ruled that "gravel is a mineral reserved to the United States in lands patented under the SRHA." *Id.* at 60.

Substantial portions of the Court's decision analyze how the general mining laws bear on the identification of reserved gravel deposits. In particular, the Court devoted considerable attention to the treatment of gravel deposits as "valuable mineral deposits" under the mining laws. *See* 462 U.S. at 50-51, 55-59. The Court explained, for example, that economic value is a prerequisite to the treatment of gravel deposits as "minerals" subject to location under the mining laws. According to the Court:

> The treatment of *valuable deposits of gravel as mineral deposits locatable under the mining laws reflect [sic] an application of the "prudent-man test"* .... Under this test, which has been repeatedly approved by this Court, a deposit is locatable if it is "of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a

> reasonable prospect of success, in developing a valuable mine." . . . *In the case of nonmetalliferous substances such as gravel, the Secretary has required proof that "by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the deposit is of such value that it can be mined, removed and disposed of at a profit.*"

Id. at 58 n.18 (citations omitted) (emphasis added). The Court reasoned that "[t]he treatment of gravel as a mineral under the general mining laws suggests that gravel should be similarly treated under the SRHA, for *Congress clearly contemplated that mineral deposits in SRHA lands would be subject to location under the mining laws . . . .*" *Id.* at 59 (emphasis added).[7]

In the case presented here, BedRoc introduced undisputed evidence that the sand and gravel at the Butler property had *no economic value* until the 1990s and thus was *never* a "valuable mineral" subject to location under the mining laws. The Ninth Circuit, however, rejected the notion that the mineral reservation was coextensive with the mining laws. App. 19a. Moreover, the court interpreted *Western Nuclear* to call for the application of statutory mineral reservations (*i.e.*, reservations mandated by statute) as a "straightforward legal [question] regarding congressional intent." App. 20a. On this basis, the court deemed the value (or worthlessness) of the materials at any

[7] *See also* 462 U.S. at 62 n.4 (dissent agreeing that "mineral exploitation of SRHA lands was made subject to the same restrictions that characterize development of lands under the general mining laws, and thus the interpretation of those laws is directly pertinent to determining congressional intent in 1916").

given property irrelevant. Based on DOI statistical reports from the 1910s that included dollar values for gravel production nationwide, the court reasoned that sand and gravel *generally* were recognized as "valuable" and ruled as a matter of law that *all* sand and gravel was reserved under the Pittman Act.

The Ninth Circuit thus misapprehended the basis for, and the breadth of, the *Western Nuclear* decision. The Court in *Western Nuclear* found "no indication that Congress intended the mineral reservation in the SRHA to be *narrower in scope than the mining laws*." 462 U.S. at 59 (emphasis added). The Court did *not* rule, however, that Congress intended the reservation to be *broader in scope* than those laws. Instead, the Court's analysis makes plain that the scope of "minerals" subject to the mining laws *directly* corresponds to the scope of the mineral reservation.

Given the importance of "marketability" and the "prudent-man test" to identifying gravel deemed "mineral" under the mining laws, *Western Nuclear* cannot reasonably be construed to support the notion that those concepts are immaterial to determining whether gravel at any particular property was intended to be reserved. Indeed, the decision turned entirely on Congress's purpose of reserving "*valuable* subsurface resources," and the Court spoke repeatedly of "valuable gravel deposits," deposits "subject to location" under the mining laws, and the "prudent-man test." *See supra.* While some of the Court's statements were expressed in rather broad terms, the Court's reasoning in no way supports the arbitrary reservation of *all* gravel to the government – even gravel that was *not* subject to the mining

laws because it had *no market value* during any relevant time period.[8]

To the consternation of many lower courts and commentators, *see infra* III.A., the *Western Nuclear* decision opened the door to claims that common gravel was reserved to the United States as a "mineral." It did not, however, address the important question presented here: whether a statutory reservation of "minerals" encompasses *all* gravel, regardless of value at the time of the patent. The *Western Nuclear* case was presented on a limited factual record, and the surface owner itself never argued that the gravel's value post-dated the reservation (*i.e.*, the 1926 patent). Significantly, however, the Court quoted a BLM appraisal finding that gravel production was "the highest and best use of the property," in addition to the IBLA's ruling that "gravel *in a valuable deposit* is a mineral reserved to the United States . . . ." 462 U.S. at 40-41 (emphasis added). Read as a whole, the decision strongly suggests that the Court assumed the requisite commercial value had been established on the basis of these findings.

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[8] Because the sand and gravel at issue here had no market value until the 1990s, it could not have been identified as "mineral" under the mining laws when the statute was enacted, when the land was patented in 1940, or at any other time until decades after Congress removed common materials from the purview of the mining laws under Section 3 of the Surface Resources Act of 1955 (the Common Varieties Act), 30 U.S.C. § 611 (App. 71a).

II. Review Is Warranted to Clarify This Court's Ruling in *Western Nuclear*.

A. *Western Nuclear* Does Not Support the Ninth Circuit's Rule that All Gravel Is Reserved Under a Statutory Mineral Reservation, Irrespective of Its Lack of Economic Value at the Time of the Grant.

Given the Ninth Circuit's reliance on *Western Nuclear* with respect to an issue that was *not* addressed in that case, the Court's ruling should be clarified and limited. Aside from the importance of the issue to Pittman Act patentees and their successors, review is critical to clarify ownership of tens of millions of acres patented pursuant to the SRHA or any other federal statute mandating a general mineral reservation.

B. Only Materials Defined as "Minerals" at the Time of the Patent Were Reserved.

The Ninth Circuit ruled that sand and gravel need not be present in a "valuable mineral deposit" at the time of the patent in order to be reserved as "valuable minerals." App. 18a-19a. The court reasoned that the term "valuable minerals" (in the mineral reservation) is broader than "valuable mineral deposits" (locatable under the mining laws) because certain substances like gold are undeniably "valuable minerals" even if they are present in deposits too small or inaccessible to profitably extract. *Id.*

The court's rationale disregards the central role that "value" plays in identifying "minerals" under the mining laws. "Minerals" for purposes of mining law can be virtually any mineralogical substance that can be extracted from the earth and that has *independent value distinct from the surrounding earth*. As one early court explained:

> . . . having reference to its supposed etymology of anything mined, it may be defined as any inorganic substance found in nature, *having sufficient value, separated from its situs as part of the earth*, to be mined, quarried, or dug for its own sake or its own specific uses. That is the sense in which it is most commonly used in conveyances and leases of land . . . .

Hendler v. Lehigh Valley R. Co., 58 A. 486, 487 (Pa. 1904) (emphasis added) (finding common mixed sand that had utility but no commercial market value was not "mineral"). According to one leading authority: "The real test seems to be the character of the deposit as occurring *independently of the mere soil, valuable in itself* for commercial purposes . . . ." 1 Curtis H. Lindley, AMERICAN LAW RELATING TO MINES AND MINERAL LANDS, § 93, at 156 (3d ed. 1914) (emphasis added).

"Value" is integral to identifying "minerals" under the mining laws by design, as it allows the concept of what is "mineral" to evolve over time. As the DOI Solicitor explained in 1956:

> The reasons for the emphasis given in the mining laws to "value" rather than to defining the term "minerals" is apparent when consideration is given to the fact that *what is or what is not a "mineral" is not a static matter of scientific certainty, but is subject to change as new uses are discovered for the many varied mineralized substances found in the earth.*

United States Department of the Interior, Solicitor Op. M-36379, at 2 (Oct. 3, 1956) (emphasis added). Explaining how the concept applies to the common, non-metallic

substances that make up much of the land itself, "value" would be found – and the substances would be recognized as "mineral" – "*only if they were valuable for commercial purposes and located near enough to a market to provide an economic return.*" *Id.* (emphasis added).

Thus, common non-metallic substances are different from intrinsically valuable minerals (such as gold) under the mining laws in that *site-specific circumstances* (*e.g.*, accessibility, quantity, proximity to market, etc.) alone account for their value. Because of their relative abundance in the earth, such substances have no recognized intrinsic value and therefore attain "mineral" status only by virtue of special features or circumstances that give them value. Common materials have *always* been fundamentally different from intrinsically valuable minerals in this respect, even though their treatment under the mining laws has otherwise varied over the years.

Prior to 1929, for example, common materials like gravel were deemed not "mineral" unless they possessed some "peculiar" characteristic establishing "distinct and special value." *See infra* III.B.[9] Even after DOI reversed that general rule in 1929, however, such common materials were deemed mineral only "if they were *valuable for commercial purposes and located near enough to a market* to provide an economic return." Solicitor Op. M-36379, at 3 (emphasis added). Finally, under the Surface Resources Act of 1955, 30 U.S.C. § 611, Congress again removed common

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[9] The "peculiar" characteristic might be, for example, the presence of small quantities of an intrinsically valuable mineral like gold appearing within a deposit of a more common deposit like gravel. *See Zimmerman v. Brunson*, 39 Pub. Lands Dec. 310, 313 (1910).

materials from the purview of the mining laws unless they met the "distinct and special value" test that was in place prior to 1929.

Even applying the most expansive view that was in vogue from 1929 to 1955, only common materials of *economic value* could be deemed "minerals" subject to reservation. The 1956 Solicitor's Opinion mentioned above applied precisely this test in the interpretation of a 1926 *statutory mineral reservation*,[10] concluding that:

> Deposits of sand and gravel in lands allotted or patented under the act of June 3, 1926 (44 Stat. 690), *which can be shown as of the date of the allotment or patent to have a definite economic value* by reason of the existence and nearness of a market in which they can be sold at a profit, are reserved.

Id. (cover summary).[11] The Solicitor was careful to point out that this rule does *not* limit the reservation of "other minerals having known *intrinsic mineral qualities and values*," but governs only reservations of "low-value non-metallic mineralized substances such as sand and gravel which are normally found in quantity over widely distributed areas." *Id.* at 4 (emphasis added).

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[10] The statutory reservation at issue was more broadly worded than the Pittman Act, calling for the reservation of "timber, coal or *other minerals* including oil and gas *or other natural deposits*."

[11] *See also id.* at 3 ("These concepts of 'value' and 'existence of a market' have also been long applied by the authorities in construing mineral reservations in grants of private lands.") (citing *Lindley, supra,* § 93, and *Hendler v. Lehigh Valley R. Co.*, 209 Pa. 256, 58 A. 486 (Pa. 1904).

It is thus entirely consistent with long-standing DOI policy – as well as fundamental principles of mining and property law – to apply statutory mineral reservations in light of *economic value at the time of the reservation* where common substances are at issue. For common materials, site-specific economic value literally dictates whether the materials are "mineral." If patentees are entitled, in theory, to know what has been granted at the time of the conveyance, then only common materials of the requisite value *at the time of the conveyance* can be reserved.

This is in accord with the interpretation of reservations in other contexts as well, where the courts seek to discern and enforce the intent of the parties at the time of the transaction. *See, e.g., Poverty Flats Land & Cattle Co. v. United States*, 788 F.2d 676, 683 (10th Cir. 1986) ("New BLM views as to mineral reservations arrived at long after a patent issued, or revealed long after a patent issued, cannot change the title the patentee received under the then-prevailing practice and decisions."); *Miller Land & Mineral Co. v. State Highway Comm'n of Wyoming*, 757 P.2d 1001, 1007 (Wyo. 1988) ("Gravel will satisfy this definition [of mineral] *if it has the requisite value*. And there may be instances wherein a reservation of minerals has been made in past years and wherein the requisite *value was present and recognized to be so* in the minds of the parties.") (concurring opinion). The substances to be reserved must be determinable (at least in theory) as of the date of the patent, or else the grant is meaningless and the patentee's title is constantly shifting in response to changing economic conditions.

III. Review Is Warranted to Consider Whether "Valuable Minerals" Includes Common Materials Like Sand and Gravel.

A. *Western Nuclear* Was Itself Out of Step with Long-Standing and Still Prevailing Views on the Treatment of Common Materials.

The Ninth Circuit's expansion of *Western Nuclear* is erroneous and distressing. Yet it merely compounds the confusion and inequity that has already arisen in the wake of that decision. This Court's interpretation of the SRHA mineral reservation to encompass common substances such as gravel was itself a sharp departure from traditional understandings. *Western Nuclear* stands in stark contradiction to long-standing view of the overwhelming majority of courts addressing mineral reservations in other contexts. Indeed, "the *vast majority of courts* have held for various reasons that gravel is not a mineral estate in general private grants or reservations of minerals." *Miller Land & Mineral*, 757 P.2d at 1003. *See also Heinatz v. Allen*, 217 S.W.2d 994, 997 (Tex. 1949); *Burkey v. United States*, 25 Cl. Ct. 566, 575-76 (U.S. Cl. Ct. 1992) (discussing Colorado's general rule excluding sand and gravel from mineral reservation and citing decisions of other jurisdictions "overwhelmingly to the same effect"); *Farrell v. Sayre*, 270 P.2d 190 (Colo. 1954).[12]

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[12] *See also Bambauer v. Menjoulet*, 214 Cal. App. 2d 871 (1963); *W.S. Newell, Inc. v. Randall*, 373 So.2d 1068 (Ala. 1979); *Fisher v. Kewenaw Land Ass'n*, 124 N.W.2d 784 (Mich. 1963); *Hovden v. Lind*, 301 N.W.2d 374 (N.D. 1981); *Holland v. Dolese Co.*, 540 P.2d 549 (Okla. 1975). *See generally* 54 Am. Jur. 2d Mines & Minerals, § 8 (1971).

Western Nuclear's determination that a valuable gravel deposit was reserved under the SRHA mineral reservation typically has been distinguished by lower federal courts and state courts, which decline to construe general reservations to include such materials in other contexts. *E.g.*, *Miller Land & Mineral*, 757 P.2d at 1003 (rejecting request to "follow the emerging law that gravel is a mineral posited in the United States Supreme Court case of *Watt v. Western Nuclear, Inc.*"); *Burkey*, 25 Ct. Cl. at 577 (sand and gravel not reserved); *Rysavy v. Novotny*, 401 N.W.2d 540, 542 (S.D. 1987) (quartzite rock not reserved); *Downstate Stone Co. v. United States*, 712 F.2d 1215, 1219 (7th Cir. 1983) (limestone not reserved where government acquired surface estate from private party). Thus, courts since *Western Nuclear* have been in general agreement that its reasoning is inapplicable in the context of private conveyances, where the courts look (as they traditionally have) to the intent of the parties at the time of the conveyance. Because the overwhelming understanding of the term "minerals" has traditionally *excluded* common materials such as gravel, these courts have generally concluded that such substances were not reserved.

Significantly, *Western Nuclear* has also been distinguished from cases involving lands patented pursuant to other *federal statutes* in which the scope of the reservation was not mandated in the statute itself. *See United States v. Hess*, 194 F.3d 1164, 1172 (10th Cir. 1999) (distinguishing owner that acquired lands pursuant to Indian Reorganization Act exchange patent, finding "Congress did not preordain Mr. Brown's surface or subsurface use of [IRA] lands"); *Poverty Flats Land & Cattle*, 788 F.2d at 681 (distinguishing *Western Nuclear* and observing "it cannot be assumed, as the Government does herein, that the surface use was preordained [by Congress]"). In these cases, because

Congress's intent is not controlling as to the scope of the reservation, the intent of the parties at the time of the conveyance controls, consistent with the approach to private conveyances. *See Hess*, 194 F.3d at 1174 (to ascertain meaning of "minerals," court "must, as in *Poverty Flats*, look at the intent of the parties … as used in the exchange patent at issue").

The reservation of common materials to the government under *Western Nuclear* thus has created a distinct, and more limited, surface estate where the land at issue can be traced back to a patent under the SRHA, the Pittman Act, or presumably any other statute with a mandatory mineral reservation. The distinction creates uncertainty and inequity in an area already dubbed the "tar baby" of natural resource law. *See* John S. Lowe, *What Substances Are Minerals?*, 30 Rocky Mtn. Min. L. Inst. 2-1 (1984). *See also Miller Land & Mineral*, 757 P.2d at 1003-04 (addressing whether gravel was reserved and commenting "[i]f there is an confusion, we suspect that the [*Western Nuclear*] case is the culprit . . . ."). Even courts that have followed *Western Nuclear* (because, for example, SRHA lands were at issue) have expressed reluctance to impose such second-class status on the surface owners of these lands. *See Champlin Petroleum Co. v. Allstate Construction, Inc.*, 708 P.2d 319, 321 (N.M. 1985) ("We, of course, must adopt the classification that the majority of the Supreme Court has accorded to the meaning of a federal act, even though we may share the reservations of the dissenters that the majority's definition of a reserved mineral may be overly broad.").

The Ninth Circuit's approach represents a significant expansion of *Western Nuclear* based on the court's apparent desire to adopt a uniform, simplified rule that would not turn on proof of "economic value" at the time of the patent.

Petitioners respectfully submit, however, that if a uniform rule is to be followed – that all sand and gravel is reserved, or all sand and gravel is not reserved – then the latter is the better rule and *Western Nuclear* should be reconsidered.

B. The Ordinary Meaning of "Minerals" Did Not Include Common Materials Such as Sand and Gravel at the Time of Enactment.

The Ninth Circuit acknowledged that "the *ordinary meaning of the phrase 'valuable minerals' does not evoke images of sand and gravel.*" The court nevertheless deemed the statutory text ambiguous because the reservation of "valuable minerals" did not "*conclusively convey* Congress' [sic] intent as to whether sand and gravel are included." App. 8a (emphasis added).

The Ninth Circuit's standards for textual specificity contradict this Court's recent admonition that statutory mineral reservations should be construed according to their *ordinary meaning* at the time of enactment. *Amoco Production Co. v. Southern Ute Indian Tribe*, 526 U.S. 865 (1999), provides that statutory mineral reservations are not ambiguous merely because they fail to *conclusively* include or exclude particular substances. There, the Court addressed whether the reservation of "all coal" under the Coal Lands Acts of 1909 and 1910 included coalbed methane gas ("CBM gas") located within coal formations. The Tenth Circuit found the term "coal" ambiguous as to the inclusion of CBM gas and invoked the canon of construction of ambiguities in favor of the sovereign. *See* 526 U.S. at 871-72.

This Court reversed based on its finding that "the *common conception* of coal at the time Congress passed the 1909 and 1910 Acts was the solid rock substance that was

the country's primary energy resource." *Id.* at 874 (emphasis added). According to the Court:

> The question is not whether, given what scientists know today, it makes sense to regard CBM gas as a constituent of coal but whether Congress so regarded it in 1909 and 1910. In interpreting statutory mineral reservations like the one at issue here, we have emphasized that Congress "was *dealing with a practical subject in a practical way*" and that it intended the terms of the reservation to be understood in "their *ordinary and popular sense*."

Id. at 873 (emphasis added) (citing *Burke v. Southern Pacific R. Co.*, 234 U.S. 669, 679 (1914), and *Perrin v. United States*, 444 U.S. 37, 42 (1979)). Because the "most natural interpretation" of "coal" in the relevant statutes did not encompass CBM gas, the Court found no ambiguity and no need for resort to canons of construction. *Id.* at 880.

The Ninth Circuit's decision that "valuable minerals" is ambiguous as to sand and gravel disregards the "*general understanding*" explained by DOI in 1910. According to DOI then, "unless they possess a *peculiar property* or characteristic giving them a special value," common materials such as gravel "*were not to be regarded as mineral*." *Zimmerman v. Brunson*, 39 Pub. Lands Dec. 310, 312 (1910) (emphasis added). The *Zimmerman* decision addressed whether a commercially valuable deposit of common gravel, marketable because of its proximity to a town, could constitute a "mineral" under the general mining

laws. *Id.*[13] Citing prior decisions involving common substances that were "valuable only for general building purposes," DOI concluded that:

> . . . the Department, in the absence of specific legislation by Congress, will refuse to classify as mineral land containing a deposit of material *not recognized by standard authorities as such*, whose sole use is for general building purposes, and whose chief value is its proximity to a town or city, in contradistinction to numerous other like deposits of the same character in the public domain.

Id. (emphasis added). DOI's decision concerning gravel in *Zimmerman* was based on a "search of the standard American authorities" that "failed to disclose a single one which classifies a deposit such as claimed in this case as mineral." *Id.* Moreover, DOI was not "aware of any application to purchase such a deposit under the mining laws." *Id.*

The *Zimmerman* decision was thereafter followed as *conclusive* that ordinary gravel was not "mineral" under the mining laws, regardless of its commercial value. *See Litch v. Scott*, 40 Pub. Lands Dec. 467, 469 (1912). Its reasoning also was applied in determinations concerning other common materials, such as commercially valuable shell rock. *See Hughes v. State of Florida*, 42 Pub. Lands Dec. 401, 403-04 (1913) ("In harmony with [the *Zimmerman* decision], the deposit of shell rock here involved cannot be held a mineral under the general mining laws.").

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[13] DOI noted that "[t]he question of what constitutes a 'mineral' within the meaning of the above statutes is not free from doubt, and has frequently been before the Department for adjudication." *Id.*

This common understanding of "mineral" was also identified in *United States v. Aitken*, in which the court found that commercial gravel had "never been considered as a mineral." 25 Philippine Rep. 7, 16 (1913). According to the court:

> [If] an examination be made of the individual adjudicated cases and the decisions of the United States Land Department, upon which these general definitions of the term "mineral" are based, it will be found that *commercial gravel* was not a factor in forming them, and that it has *never been considered as a mineral*.

Id. (emphasis added).

In 1929 and for the next 25 years, DOI abandoned the *Zimmerman* rule in favor of a case-by-case approach recognizing particular deposits as "mineral" *if* they possessed value sufficient to justify mineral status under the traditional "prudent-man" test. *See Layman v. Ellis*, 52 Pub. Lands Dec. 714 (1929); Solicitor Op. M-36379. Nevertheless, in terms of the common meaning *prior to* 1929, the decisions discussed above leave little room for doubt that "minerals" did not include materials such as ordinary sand and gravel, even if they *were* commercially valuable.[14] The potential "mineral" status of those materials was established only after

[14] After reviewing the body of law discussed above, the dissent in *Western Nuclear* concluded that "it was beyond question, when SHRA was adopted in 1916 [and until 1929] that the Department had ruled consistently that gravel was not a mineral under the general mining laws." 462 U.S. at 65. Accordingly, "one must conclude that Congress intended the term 'minerals' in the new statute to have the meaning so recently and consistently given it by the Department in construing and applying the general mining laws." *Id.*

the *Layman* decision in 1929 – and even then only for particular deposits with characteristics (quantity, accessibility, proximity to market, etc.) sufficient to give them marketability and *economic value*.

C. Congress's Purpose of Encouraging the Settlement of the Arid West Does Not Support a Rule that Sand and Gravel Were Reserved to the Government.

Congress's intent to reserve only "valuable minerals" – and to convey *something* of value to patentees – would be thwarted by a rule reserving to the government the ubiquitous substances that comprise the patented lands themselves. If statutory mineral reservations are to be construed through a pure legal analysis of congressional intent at the time of enactment, that intent will surely be better fulfilled by a rule that such common substances were not reserved. Although the nation has presumably obtained the benefit of *its* bargain under the SRHA and the Pittman Act, review is necessary to ensure that patentees retain what was promised to them.

The Ninth Circuit recognized that the explicit purpose of the Pittman Act was "to encourage the exploration for and development of artesian and subsurface waters in the State of Nevada" by "creat[ing] an incentive for private individuals to risk time, labor, and money in prospecting for water." App. 9a. Because Congress hoped that the discovery of water would spur agricultural development, however, the court reasoned that the land grants to prospectors "furthered the larger goal of irrigating arid lands for farming." App. 9a. The court thus found persuasive its own prior decision in *Union Oil* and this Court's decision in *Western Nuclear* concerning the SRHA, which served the same "larger goal." Finding that this Court had "agreed with our sentiment in

Union Oil," the Ninth Circuit invoked its prior rule that "the mineral reservation is to be read broadly in light of the *agricultural purpose* of the grant itself, and in light of Congress's equally clear purpose to retain subsurface resources . . . for separate disposition and development." App. 12a (emphasis added).

Reserving to the government the very substances that comprise the land, however, has no rational relationship to Congress's ultimate objective in the Western land grant statutes. While Congress undeniably identified farming and ranching as the most promising occupations with which to attract settlers, the *goal* was the long-term settlement and economic development of the West, not a system of sharecropping. As the House Public Lands Committee reported on one of the predecessor bills to the SRHA:

> Of course, the homestead plan is best for the individual States of the semiarid West. It takes homes to insure permanent settlers and taxpayers; it takes homes to bring schools and churches; it takes homes to *build cities and towns that attract and support laborers and mechanics; population invites railroads, which in turn bring more immigration and capital to develop the barely touched resources of this great semiarid West.*

H.R. Rep. No. 63-626, at 10-11 (1914) (emphasis added).

Agriculture thus was a means to an end – not an end in itself – with the true aim being a citizenry invested in and responsible for the land and the community. The *purpose* of granting lands to people willing in good faith to make a home there was the promotion of:

> . . . more States like, for instance, Kansas and Iowa, *where each citizen is the sovereign of a portion of the soil*, the owner of his home and not a tenant of some (perhaps) distant landlord, a builder of schools and churches, a voluntary payer of taxes for the support of his local government.

Id. at 11 (emphasis added).

The *Western Nuclear* dissenters reasoned that "[i]n recommending 'citizen sovereignty' of the soil, Congress surely did not intend to destroy that sovereignty by reserving the commonplace substances that actually constitute much of that soil." 462 U.S. at 71-72. That intent is even more improbable here, where Congress explicitly set out to induce private citizens to explore and develop the underground water resources of Nevada for the public good and to grant substantial lands "as a reward for [their] labors and expenditures." H.R. Rep. No. 66-286, at 1 (1919). As this Court has held, where Congress:

> . . . offers to individuals or to corporations as an inducement to undertake and accomplish . . . works of a *quasi* public character in or through an immense and undeveloped public domain, such legislation stands upon a somewhat different footing from merely a private grant, and *should receive at the hands of the court a more liberal construction in favor of the purposes for which it was enacted.*

Leo Sheep Co. v. United States, 440 U.S. 668, 683 (1979) (emphasis added). The decision below does violence to this principle and effectively retracts ownership of the land from those who earned it and their lawful successors. The decision should not be allowed to stand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS

NINTH CIRCUIT

No. 01-17080

BEDROC LIMITED, LLC, a Nevada Limited Liability Company, *Plaintiff-Counter-Defendant-Appellant*, WESTERN ELITE, INC., a Nevada corporation, *Plaintiff-Appellant*, and EARL WILLIAMS, an individual, *Plaintiff-Counter-Defendant*,

v.

THE UNITED STATES OF AMERICA, Gale A. Norton, Secretary of the Interior; United States Department of the Interior, Bureau of Land Management, and Curtis L. Tucker, Area Manager, Caliente Resource Area Bureau of Land Management,

Defendants-Counterclaimants-Appellees.

Argued and Submitted Nov. 7, 2002.

Filed Dec. 30, 2002.

Before HAWKINS, GRABER, and TALLMAN, *Circuit Judges*.

OPINION

GRABER, *Circuit Judge:*

In this appeal, we must decide whether sand and gravel are "valuable minerals" within the meaning of the Pittman Underground Water Act (the Act or the Pittman Act), 43 U.S.C. §§ 351-359 (1935).[1] The now-repealed Act provided grants, or "patents," of federal public lands to people who found underground sources of water in the deserts of Nevada. Under the terms of the Act, these patents reserved "all the coal and other valuable minerals" to the United States. Pittman Act § 8.

Plaintiff BedRoc Limited[2] brought this action to quiet title in a parcel of land granted under the Act in 1940 to BedRoc's predecessor in interest. Citing the mineral reservation, the United States has claimed title to the sand and gravel on the parcel; BedRoc contends that sand and gravel are not "valuable minerals" within the meaning of the Act and thus were not reserved to the government. The

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[1] The closest codification to the time of the grant in this case is in the United States Code of Laws, January 3, 1935. 43 U.S.C. §§ 351-359 (repealed Aug. 11, 1964, Pub. L. No. 88-417, 78 Stat. 389 (subject to valid existing rights and obligations and without prejudice to pending claims)). We refer throughout this opinion to the sections of the Pittman Act as enacted.

[2] In 1996, BedRoc transferred 40 acres of the land to Western Elite, Inc. The parties agreed to amend the complaint to add Western Elite as a plaintiff in this action. Although Western Elite remains a plaintiff, for the sake of simplicity we refer to the plaintiffs collectively as BedRoc.

district court granted summary judgment in favor of the United States. We affirm.

We hold that sand and gravel are encompassed by the reservation of "valuable minerals" to the United States. The purpose of the Act and its legislative history instruct us to construe the reservation broadly. Moreover, government documents concerning minerals, published contemporaneously with the statute's enactment, describe the then-lucrative market for sand and gravel.

FACTS AND PROCEDURAL HISTORY

A. Historical Background

In 1910, only 81,875 people lived in Nevada. The federal government owned most of the land in Nevada. The lack of a tax base held back development of the state's infrastructure. The Homestead Acts, a successful tool for development in other western states, had failed to populate Nevada because of the lack of water available for agricultural cultivation. 54 Cong. Rec. S706 (1916).

At the time, it was thought that the future development of the state depended largely on the discovery of underground water, which could be used to irrigate land for agricultural purposes. Nevada's congressional representatives, however, failed to gain the necessary support to fund projects to explore for underground water. *Id.* As an alternative, Nevada Senator Key Pittman proposed the Pittman Underground Water Act as a means of encouraging private citizens to search for underground water in order to cultivate Nevada's arid lands.

Passed in 1919, the Act provided that the Department of the Interior would certify certain "nonmineral" public lands to parcel out to prospective settlers. Pittman Act § 1. Initially, the government issued two-year permits, giving

settlers the exclusive right to drill wells in a parcel of up to 2,560 acres. *Id.* If a settler could demonstrate successful irrigation of at least 20 acres, the United States would grant the settler a patent of up to 640 acres. Pittman Act § 5. The remaining acres would be divided into homesteads and distributed under the 160-acre Homestead Act. Pittman Act § 6.

The Act and the patents issued pursuant to the Act contain the following mineral reservation:

> That all entries made and patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal and other valuable minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other valuable mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

Pittman Act § 8 (emphasis added).

B. BedRoc's Patent

On March 12, 1940, Newton and Mabel Butler received a patent under the Act for 560 acres of land in Lincoln County, Nevada. "[I]n conformity with the . . . Act," the patent reserved to the United States "all the coal and other valuable minerals in the lands so granted, together with the right to prospect for, mine, and remove the same upon compliance with the conditions of and subject to the limitations of Section eight of said Act."

In the early 1990s, a lessee began taking sand and gravel from the property. Earl Williams purchased the property in

1993 and continued to extract sand and gravel. The Bureau of Land Management (BLM) issued trespass notices to Williams on March 26 and April 1, 1993. Williams challenged the notices. In response, the BLM issued a decision stating that Williams' removal of the sand and gravel trespassed against the government's reserved interest in the "valuable minerals" on the property. The Interior Board of Land Appeals upheld that decision on appeal, relying on the legislative history of the Act and on the intent of Congress in enacting it. *Earl Williams,* 140 I.B.L.A. 295, 304-13 (1997).

BedRoc acquired the property from Williams in 1995 and continued to remove sand and gravel. Pursuant to an agreement with the Department of the Interior, BedRoc placed money in escrow from the sale of each cubic yard of sand and gravel removed, pending final resolution of the ownership dispute.

C. District Court Proceedings

In the district court, BedRoc sought to quiet title in the sand and gravel and to determine how much of the funds in escrow should be paid to the government if the district court concluded that the mineral reservation included sand and gravel. BedRoc and the government filed cross-motions for summary judgment on the issue of ownership. The district court granted summary judgment in favor of the United States.

Before the district court resolved the remaining issues, the parties reached a settlement regarding the funds in escrow. The settlement provided that BedRoc could appeal only the ownership issues to this court. The district court entered a final judgment pursuant to the parties' stipulation, and this timely appeal followed.

STANDARD OF REVIEW

We review *de novo* a grant of summary judgment. *Robi v. Reed*, 173 F.3d 736, 739 (9th Cir. 1999). We also review *de novo* questions of statutory interpretation. *Lopez v. Wash. Mut. Bank*, 302 F.3d 900, 903 (9th Cir. 2002).

"We interpret a federal statute by ascertaining the intent of Congress and by giving effect to its legislative will." *Ariz. Appetito's Stores, Inc. v. Paradise Village Inv. Co. (In re Ariz. Appetito's Stores, Inc.)*, 893 F.2d 216, 219 (9th Cir. 1990). First, we examine the statute's text. *Siripongs v. Davis*, 282 F.3d 755, 758 (9th Cir. 2002). If the text of the statute makes Congress' intent clear, we need look no further. *United States v. Romo-Romo*, 246 F.3d 1272, 1275 (9th Cir. 2001). "Where the language is not dispositive, we look to the congressional intent revealed in the history and purposes of the statutory scheme." *United States v. Buckland*, 289 F.3d 558, 565 (9th Cir. 2002) (en banc) (citation and internal quotation marks omitted).

DISCUSSION

D. The Statutory Text

"The word 'mineral' is used in so many senses, dependent upon the context, that the ordinary definitions of the dictionary throw but little light upon its signification in a given case." *N. Pac. Ry. Co. v. Soderberg*, 188 U.S. 526, 530, 23 S. Ct. 365, 47 L. Ed. 575 (1903). A review of the dictionary definitions of "mineral" bears out that principle. Broadly, a "mineral" includes anything that is neither animal nor vegetable. Webster's Third New Int'l Dictionary 1437 (unabridged ed. 1993). Some definitions name "sand" specifically as an example of a "mineral." *See, e.g.*, Merriam-Webster Dictionary, *available at* http://www.m-w.com/. But, neither the text of the statute nor dictionary definitions answer the precise question here: Did Congress

intend sand and gravel to be included in the reservation of "*valuable* minerals" under the Pittman Act? Pittman Act § 8 (emphasis added).

The word "valuable" does not clarify the ambiguity. For purposes of statutory construction, we must determine "whether the language at issue has a plain and unambiguous meaning *with regard to the particular dispute in the case*." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997) (emphasis added). Although the ordinary meaning of the phrase "valuable minerals" does not evoke images of sand and gravel, neither does the phrase obviously exclude those substances. Sand and gravel are not "valuable" in the way that diamonds or gold might be. However, late-nineteenth century dictionaries confirm that "valuable" did not simply mean "precious"; as it does today, "valuable" also described an object's utility. *See* Joseph E. Worcester, A Dictionary of the English Language 1614 (1897) (defining "valuable" as "having value or worth; being possessed of worth or useful properties; . . . useful"). In that sense, sand and gravel have value, both for their usefulness and for their commercial worth.

When the mineral reservation is read in context, the significance of the modifier "valuable" diminishes. The mineral reservation provision, section 8 of the Act, refers to minerals several times. Sometimes the modifier "valuable" is used, but at other times variants of the word "minerals" appear without qualification. For example, the statute provides that all "[t]he coal and other valuable mineral deposits in such lands shall be subject to disposal by the United States." Pittman Act § 8. However, section 8 also provides that "[a]ny person who has acquired from the United States the coal or other mineral deposits" may enter the property with the consent of the patent holder. For that phrase to make sense, the United States must already have

owned "the coal or other mineral deposits." When considered in context, the modifier "valuable" does not, by itself, clearly limit the scope of minerals reserved to the United States.

In addition to containing the qualifier "valuable," the statute requires that land granted under the Act must first be certified as "nonmineral." Pittman Act § 1. BedRoc argues that this certification means that the government thought that the land contained no minerals at all and thus disclaimed any mineral deposits of which it was unaware at the time of grant. By contrast, the government asserts that, by granting patents only of lands that were "nonmineral," Congress expressed its intent to part only with the surface estate and to reserve *all* mineral deposits in the lands to the United States. Both interpretations are plausible; the requirement that the patented lands be designated "nonmineral" does not resolve the ambiguity.[3]

We conclude that the phrase "valuable minerals" in the Pittman Act's reservation is ambiguous. The text of the statute does not conclusively convey Congress' intent as to whether sand and gravel are included within the scope of the reservation. Because the text is unclear, we turn to a discussion of the statutory purpose, the legislative history, and other sources outside the statute to determine congressional intent.

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[3] There is a third plausible meaning of the "nonmineral" certification as well. The certification may have been intended to separate land expected to be used *primarily* for agriculture from land expected to be used *primarily* for extraction of minerals. See the discussion in the text below at pp. 1085-87 and 1088-89.

E. The Purpose of the Act

As stated in committee reports, the purpose of the Act was "to encourage the exploration for and development of artesian and subsurface waters in the State of Nevada." H.R. Rep. No. 66-286, at 1 (1919). The legislative purpose did not stop there, however. If water was discovered, it was meant to be put to use irrigating lands for agricultural development. Of course, part of the Act's purpose was to create an incentive for private individuals to risk time, labor, and money in prospecting for water. But this "reward" was not an end in itself. Rather, the Act granted land to water prospectors because their labor furthered the larger goal of irrigating arid lands for farming.

The threshold showing required to obtain a patent proves this point: The permit holder had to demonstrate that there were "underground waters in sufficient quantity to produce at a profit agricultural crops other than native grasses upon not less than twenty acres." Pittman Act § 5. Once that prerequisite was met, the remaining area under the permit was open to entry only under the 160-acre Homestead Act. Pittman Act § 6.

In the legislative history, numerous references to Nevada's agricultural future confirm that the larger goal of the Act was to encourage the cultivation of land for agricultural purposes: "The primary object of the bill is to encourage the development of the agricultural portions of the public domain in the State of Nevada, not susceptible of irrigation from any known source of surface water supply . . . ." H.R. Rep. No. 64-731, at 1 (1916); "The future development of the agricultural land of the State seems to depend largely upon the development of artesian water." H.R. Rep. No. 63-1418, at 2 (1915); *see also* S. Rep. No. 64-4, at 2 (1915) (stating same); "It is evident that the retarding of agricultural development in Nevada is due entirely to the

failure of the Government to provide laws under which the land could be acquired and the waters of the State developed and conserved." H.R. Rep. No. 66-286, at 2 (1919); "The geo-graphical situation of the State of Nevada, the absence of large streams or other large bodies of surface waters, the aridity or semiaridity of the soil, the other conditions peculiar to the State, fully warrant a special law designed to meet the situation and promote agricultural development." 54 Cong. Rec. S706 (statement of Sen. Pittman, reading a letter from the Secretary of the Interior).

If the aim of the land grants was to promote agriculture, it follows that the government meant to reserve minerals for other uses. In fact, full reservation of mineral rights was the policy in place at the time of the Act's passage.

In *United States v. Union Oil Co. of California,* 549 F.2d 1271, 1272 (9th Cir. 1977), we held that geothermal steam was reserved to the United States in grants made under the Stock-Raising Homestead Act (SRHA),[4] which was enacted only three years before the Pittman Act. We summarized the treatment of agricultural and mineral entries onto public land at the turn of the last century:

> Prior to 1909, public lands were disposed of as either wholly mineral or wholly nonmineral in character. This practice led to inefficiencies and abuses. In 1906 and again in 1907, President Theodore Roosevelt pointed out that some public lands were useful for both agriculture and

[4] The mineral reservation in the SRHA states that patents under the Act "shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented." 43 U.S.C. § 299(a).

> production of subsurface fuels, and that these two uses could best be served by separate disposition of the right to utilize the same land for each purpose . . . . To that end, the President recommended "enactment of such legislation as would provide for title to and development of the surface land as separate and distinct from the right to the underlying mineral fuels in regions where these may occur . . . ."

Id. at 1274-75 (citation omitted) (quoting 41 Cong. Rec. 2806 (1907)). The President said that this "'system . . . will encourage the separate and independent development of the surface lands for agricultural purposes and the extraction of the mineral fuels in such manner as will best meet the needs of the people.'" *Id.* at 1275 n. 8 (quoting 41 Cong. Rec. 2806).

In *Watt v. Western Nuclear, Inc.,* 462 U.S. 36, 103 S. Ct. 2218, 76 L. Ed. 2d 400 (1983), the Supreme Court considered the same legislative history when it decided that gravel was reserved to the United States in grants made under the SRHA. The Court relied heavily on the agricultural purpose of the SRHA and on the policy in place at the time of its enactment to sever the mineral estate from agricultural grants. The Court noted that, "[s]ince Congress intended to facilitate development of both surface and subsurface resources, the determination of whether a particular substance is included in the surface estate or the mineral estate should be made in light of the use of the surface estate that Congress contemplated." *Id.* at 52, 103 S. Ct. 2218. The Court reasoned that,

> [i]f we were to interpret the SRHA to convey gravel deposits to the farmers and stockmen who made entries under the Act, we would in effect be saying that Congress intended to make the exploitation of

> such deposits dependent solely upon the initiative of per-sons whose interests were known to lie elsewhere.

Id. at 56, 103 S. Ct. 2218. Thus, the Court agreed with our sentiment in *Union Oil* that "the mineral reservation is to be read broadly in light of the agricultural purpose of the grant itself, and in light of Congress's equally clear purpose to retain subsurface resources . . . for separate disposition and development." *Union Oil,* 549 F.2d at 1279.

As we have said, Congress passed the SRHA in 1916, just three years before the Pittman Act. The floor debates surrounding the Pittman Act reveal that Congress intended the mineral reservation to serve the same purposes and have the same scope as the reservation under the SRHA. *See* H.R. Rep. No. 66-286, at 1 (1919) ("Section 8 of the bill contains the same reservations of minerals, with the facility for prospecting for and developing and mining such minerals as was provided in the [SRHA]."). Thus, congressional debates support the government's position, consistent with both *Western Nuclear* and *Union Oil,* that the mineral reservation in the Pittman Act is to be construed broadly.

F. Congressional Debate Concerning the Mineral Reservation

Congress – including Senator Pittman, the sponsor of the Act that bears his name – discussed at length the scope of the mineral reservation in the Pittman Act. *See Williams,* 140 I.B.L.A. at 304-13 (discussing the voluminous history of the Pittman Act); *see also Kalvinskas v. Cal. Inst. of Tech.,* 96 F.3d 1305, 1309 (9th Cir. 1996) (giving substantial weight to statements made by a bill's sponsor). Excerpts of the debates on this issue reveal that the mineral reservation was the product of a legislative compromise, without which the bill likely would not have passed.

During debates on the bill, Senator Thomas from Colorado moved for an amendment to remove the mineral reservation. 54 Cong. Rec. S707. Senator Pittman responded:

> [B]efore the Senator does that, I trust that he will consider the matter for a minute. This bill, as it was originally prepared by me, did not contain that reservation. When a similar bill was introduced in the House of Representatives, at my request, it met with serious opposition on the very ground that it might be used for the purpose of grabbing mineral lands.
>
> There was not the slightest chance on earth of passing such a bill through the House of Representatives if there was the slightest suspicion that the bill could be used for the purpose of acquiring mineral lands under the guise of obtaining agricultural lands. This reservation from all characters of agricultural entries is usual; and, without discussing the question of whether or not it is a good provision, I must say that *it is the policy of Congress, as I see it, not to permit the acquisition of any character of minerals through any agricultural entry.*

Id. (emphasis added).

Senator Pittman urged Senator Thomas to withdraw his amendment, for fear that its inclusion would "destroy the bill." *Id.* Senator Thomas continued to insist that patentees who prospect for water should be allowed to retain any minerals that they find. *Id.* Senator Pittman explained that "the Government by this bill reserves those minerals. It segregates them from the lands primarily granted for agricultural purposes." *Id.* Senator Thomas countered with

the suggestion that the bill "should provide for the acquisition of complete-title to 640 acres as a reward for developing its subterranean water courses." *Id.* Senator Pittman replied:

> I would favor that if I thought it would pass the bill; but I am confident that the inclusion of any such right in this grant would mean the destruction of the bill. . . .
>
> [I]f the Senator's amendment carries[,] the bill will die; and I certainly would rather have what I can get for the people of our State than to stand here on a technical question trying to get more, with the probability of losing all.

Id.

The amendment was rejected, and the mineral reservation to the United States remained. This portion of the debate suggests that, without the reservation, the House would not have passed the bill. Senator Pittman did not limit the reservation. Rather, he spoke about it quite broadly. Emphasizing the agricultural nature of grants under the Act, Senator Pittman understood the bill to separate the mineral estate entirely – "any character of minerals" – and reserve it to the government. Finally, this piece of history is instructive because it appears that Senator Thomas' view of the mineral rights as a "reward" for water prospectors was not shared by a majority of the Congress.

Later, the issue of the mineral reservation resurfaced in the House. 58 Cong. Rec. H6469 (1919). Representative Blanton moved to "reserve the mineral rights of the Government." *Id.* This colloquy ensued:

> Mr. KINKAID: They are reserved.

> Mr. EVANS: They are already re-served.
>
> Mr. BLANTON: The way I caught the bill it just spoke of the lands as nonmineral lands. Many lands classified as nonmineral and nonagricultural lands are, as a matter of fact, mineral and agricultural in some instances.
>
> MR. TAYLOR: Those reservations are made now by general law. It is not necessary to put that in. You can not get oil land by homesteading nowadays.
>
> Mr. BLANTON: It is *all* reserved?
>
> Mr. TAYLOR: Yes.
>
> Mr. BLANTON: These lands come under the general reservation?
>
> Mr. TAYLOR: Yes.
>
> Mr. BLANTON: These homesteads to-day do not contain any oil?
>
> Mr. TAYLOR: When you get a homestead, you do not get any oil under it. The oil that may be underneath it is reserved. . . .
>
> Mr. BLANTON: If the mineral rights are properly reserved, I have no objection.
>
> Mr. EVANS: They are properly reserved.

Id. (emphasis added).

Again, the reservation was discussed without reference to any limitation. More importantly, this portion of the debate demonstrates that Congress was doubtless aware that the characterization of lands as "nonmineral" did not mean that those lands contained no minerals. Rather, it meant that the land was "chiefly valuable" for resources other than

minerals. *N. Pac. Ry. Co.,* 188 U.S. at 534, 23 S. Ct. 365; *see also Union Oil,* 549 F.2d at 1274-76 (discus-sing the history of characterizing public lands as "mineral" or "nonmineral").

The breadth of the reservation of mineral rights discussed in the legislative history supports the government's position: Congress did not intend to convey any mineral rights to patentees under the Act. However, neither the cases construing the SRHA, nor the floor debates on the Pittman Act, shed any light on whether the term "valuable" significantly limits the reservation. We move next to a discussion of the meaning of the term "valuable" in this context.

G. "Valuable minerals"

The SRHA's reservation does not contain the adjective "valuable." Instead, the SRHA simply reserves "all the coal and other minerals" to the United States. 43 U.S.C. § 299(a). As discussed, the SRHA's contemporaneous enactment and analogous purpose are instructive to a degree. But, because the SRHA does not use the modifier "valuable," we cannot conclude simply that the two reservations are coextensive. "[I]t is 'a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *City of Los Angeles v. United States Dep't of Commerce,* 307 F.3d 859, 870 (9th Cir. 2002) (quoting *TRW Inc. v. Andrews,* 534 U.S. 19, 122 S. Ct. 441, 449, 151 L. Ed. 2d 339 (2001)).

Contemporaneous government publications persuade us that, even if Congress intended the word "valuable" to limit the kinds of minerals reserved to the United States, sand and gravel were reserved. As early as 1914, five years before the Pittman Act was passed, the Department of the Interior

devoted a full section of its annual publication, "Mineral Resources of the United States," to sand and gravel. The publication described the increase in production of sand and gravel since 1904, culminating in a reported yield of more than 79 million tons in 1914, which was valued at close to $24 million.[5] Department of the Interior, Mineral Resources of the United States 1914, at 271 (1916).

In succeeding years, the publication on mineral resources continued to analyze the sand and gravel industry. The government report for 1916 noted that "the production of sand and gravel was unprecedentedly large. All kinds of sands increased in total value . . . . From many parts of the country it was reported by producers that they could not get enough men to operate at the desired capacity or enough cars to meet their requirements." Mineral Resources of the United States 1916, at 327 (1919). In 1917, the production of sand and gravel in the United States was valued at more than $35 million.[6] Mineral Resources of the United States 1917, at 381 (1920). The Department of the Interior noted that "[o]nly four natural nonmetallic minerals produced in the United States . . . show a greater annual value than that of sand and gravel." *Id.*

Even acknowledging that sand and gravel were valuable in some areas at the time of enactment, BedRoc contends,

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[5] Something worth $24 million in 1914 would have been worth $423 million in 2001. *See* John J. McCusker, "Comparing the Purchasing Power of Money in the United States (or Colonies) from 1665 to Any Other Year Including the Present," Economic History Services, 2001, *available at* http://www.eh.net/hmit/ ppowerusd.

[6] In 2001, this amount of sand and gravel was worth more than $570 million. *See id.*

there could have been no viable market for the sand and gravel in *this* parcel at the time of *this* patent. BedRoc urges that we apply a site-specific analysis to determine whether a resource is "valuable." As support for that proposition, BedRoc argues that the term "valuable minerals" has the same meaning as the term "valuable mineral deposits" in the General Mining Act of 1872 (General Mining Law). That law determines how minerals are disposed of when they are discovered on public lands. 30 U.S.C. § 22 et seq.

According to BedRoc, Congress meant "valuable" to limit the reservation of rights to minerals that would be locatable under the General Mining Law. It follows, BedRoc urges, that we should determine whether sand and gravel are "valuable minerals" under the Pittman Act in the same way that we would determine whether a claimant had discovered "valuable mineral deposits" under the General Mining Law. Under the General Mining Law, we consider whether land contains "valuable mineral deposits" through application of the "prudent-man test." *W. Nuclear,* 462 U.S. at 58 n. 18, 103 S. Ct. 2218. In other words, we ask whether the challenged mineral deposit is the kind that would lead a prudent person to believe that a commercially viable mine could be operated with respect to that deposit. *Id.* Because that question is essentially factual, BedRoc argues that summary judgment was inappropriate.

We disagree with BedRoc's assertion that the two statutes refer to the same concept. The term "valuable" is used differently in the General Mining Law than in the Pittman Act. In the General Mining Law, the key phrase is "valuable mineral *deposits.*" 30 U.S.C. § 22 (emphasis added). The adjective "valuable" does not modify the noun "minerals" as in the Pittman Act; rather, it modifies the noun "deposits," and the word "mineral" also modifies "deposits."

The two terms – "valuable minerals" and "valuable mineral deposits" – are not synonymous. Not every deposit of minerals – no matter how "valuable" the mineral itself may be – is sufficient to constitute a "valuable mineral deposit" under the General Mining Law. A gold or silver deposit undoubtedly is made up of "valuable minerals" but, unless the deposit is significant enough and accessible enough to justify the expense of extraction, it is not a "valuable mineral deposit" under the General Mining Law. *See W. Nuclear,* 462 U.S. at 58 n. 18, 103 S. Ct. 2218 (discussing the standard).[7]

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[7] Even if we were to accept BedRoc's argument that "valuable minerals" and "valuable mineral deposits" were synonymous, it would not lead to the conclusion that BedRoc seeks. To the contrary, the General Mining Law would provide further support for our decision that sand and gravel were considered "valuable minerals" in the first half of the 20th Century. In 1955, the General Mining Law was amended specifically to exclude sand and gravel from substances locatable under those laws. That amendment provides:

> No deposit of common varieties of sand . . . [or] gravel . . . shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws . . . .

30 U.S.C. § 611. In *Western Nuclear,* the Court found the 1955 amendment "highly pertinent" and interpreted it to mean that, before its adoption, sand and gravel *were* locatable under the mining laws. 462 U.S. at 57 & n. 15, 103 S. Ct. 2218. In other words, *before 1955,* a deposit of sand and gravel large enough to justify commercial extraction could have been a "valuable mineral deposit" under the General Mining Law. Because the Act in this case refers to "valuable minerals," the 1955 amendment removing sand and gravel deposits from the scope of "valuable mineral deposits" would seem to suggest that, before 1955, sand and gravel were considered "valuable

(continued...)

Moreover, we disagree with BedRoc's contention that the question here is factual and site-specific. Rather, as in *Western Nuclear,* the question is a straightforward legal one regarding congressional intent as to the scope of the mineral reservation contained in the statute. *Id.* at 53-056, 103 S. Ct. 2218. When a mineral reservation is part of the statute itself, we follow the Supreme Court's lead and interpret that reservation using the usual tools of statutory construction. *Id.; cf. United States v. Hess,* 194 F.3d 1164, 1170-72 (10th Cir. 1999) (construing the scope of a reservation in a patent issued under the Indian Reorganization Act (IRA) and distinguishing *Western Nuclear* on the ground that the IRA itself did not contain a mineral reservation).

The prudent-person test makes sense when trying to decide whether a claimant has located a vein or lode of minerals that is sufficient to satisfy the requirements for a mining claim on federal land. *See* 30 U.S.C. § 22. The concept of "value" defines the deposit and thus the commercial viability of the claim. However, it does not follow that the United States meant to impose this same constraint upon itself when it reserved "all the coal and other valuable minerals" under the Act. Had Congress intended to import the prudent-person test from the General Mining Law

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(...continued)

minerals" that, in large enough "deposits," were locatable under the mining laws. *See id.* at 57-58, 103 S. Ct. 2218 (collecting cases).

into the reservation of "valuable minerals" to the United States, it likely would have done so explicitly.

CONCLUSION

Based on the text, purposes, and legislative history of the Pittman Act, we hold that sand and gravel are "valuable minerals" reserved to the United States. Accordingly, the judgment of the district court is AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Civil Action No. CV-S-98-01012

BEDROC, LLC, a Nevada Limited Liability Company, and EARL WILLIAMS, an individual,

Plaintiffs-Counterdefendants,

v.

THE UNITED STATES OF AMERICA; Bruce Babbit, Secretary of the Interior; United States Department of the Interior; Bureau of Land Management; and Curtis L. Tucker, Area Manager, Caliente Resource Area, Bureau of Land Management,

Defendants-Counterclaimants.

ORDER

Presently before this Court is Plaintiffs BedRoc Limited, LLC's ("BedRoc") and Earl Williams' ("Williams") Motion for Summary Judgment (Doc. # 16), filed on February 1, 1999. In connection with this initial submission, BedRoc and Williams have also provided: (1) a Notice of Filing Facsimile Declaration (Doc. # 17) (filed on February 1, 1999); (2) a Notice of Filing Unsigned Declaration (Doc. # 19) (filed on February 1, 1999); (3) Errata to Memorandum

in Support of Motion for Summary Judgment (Doc. # 21) (filed on February 3, 1999); and (4) a Notice of Filing Original Declarations (Doc. # 22) (filed on February 8, 1999). Defendants United States of America, Interior Secretary Bruce Babbit, the Department of the Interior, the Bureau of Land Management ("BLM"), and BLM Area Manager Curtis L. Tucker (hereinafter labeled collectively as the "U.S. Government") filed a Brief in Support of Mineral Ownership and Opposition (Doc. # 26) on March 18, 1999.

The U.S. Government also filed a Brief on Mineral Ownership (Doc. # 20) on February 1, 1999. BedRoc and Williams filed a Response (Doc. # 27) on March 18, 1999.

I. INTRODUCTION

The development, exploitation and preservation of public land resources has played a key role in the development of the State of Nevada. In the course of this nation's history, Congress has passed literally thousands of public land laws in order to foster economic and social growth. *See Arthur R. Wallace,* 30 IBLA 239, 240 (1977). Many of these laws have become obsolete with the evolution of our republic. Today, this Court must discern the ambit of one of these now-defunct statutes, the Pittman Underground Water Act, in order to determine whether Defendant U.S. Government or Plaintiffs BedRoc and Williams have ownership rights to deposits of sand and gravel located on formerly public lands. After examining the Act's legislative history and utilizing other tools of statutory construction, this Court concludes that the deposits are the reserved property of the United States.

II. BACKGROUND

A. The Pittman Underground Water Act

In 1910, the population of the State of Nevada numbered only 81,875. *See* H.R. Rep. No. 63-1418, at 2 (1915). One of the main impediments to population growth was a lack of artesian water sources. *See id.* The Pittman Underground Water Act, 43 U.S.C.A. §§ 351-360 (West 1964), repealed by Pub. L. No. 88-417, § 1, 78 Stat. 389 (1964) (hereinafter the "Pittman Act"), was specifically designed to address this problem. The Secretary of the Interior was authorized to issue permits, not to exceed two years, providing the exclusive right "to drill or otherwise explore for water beneath the surface ... of unreserved, unappropriated, nonmineral, nontimbered public lands of the United States in the State of Nevada not known to be susceptible of successful irrigation at a reasonable cost from any known source of water supply." Pittman Act § 1.

To acquire such permits, potential settlers were required to file affidavits averring that their applications were made "honestly and in good faith ... for the purpose of reclamation and cultivation." Pittman Act § 2. Upon the applicant's successful demonstration that he or she could irrigate at least twenty acres of the permitted parcel, the applicant would receive a land patent of up to 640 acres as a reward. *See* Pittman Act § 5. However, any acquired land was controlled by the following mineral reservation:

> [A]ll entries made and patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal and other valuable minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other valuable mineral deposits in such lands shall be

> subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

Pittman Act § 8.

From its inception, the legislation was acknowledged as being somewhat experimental. *See* 58 Cong. Rec. H6468, H6468 (1919) (statements of Rep. Evans). Ultimately, the experiment was labeled a failure. In 1964, Congress repealed the Pittman Act due to its inability to promote agricultural development in Nevada. *See* S. Rep. No. 88-1282, at 1 (1964), *reprinted in* 1964 U.S.C.C.A.N. 2699, 2699 (noting creation of only negligible amounts of crop land and "ill-advised" applications).

B. Factual and Procedural Background

On March 12, 1940, BedRoc's and Williams' predecessor-in-interest acquired the patent to the surface estate of 560 acres of land, located in Lincoln County, Nevada, under the Pittman Act. (*See* Patent, attached as Ex. 1 to Defs.' Brief on Mineral Ownership, Doc. # 20.) Before receiving this patent, the Director of the Geological Survey certified the land as nonmineral in nature and recommended its disposal under the Pittman Act. (*See* Letter from Director, U.S. Geo-logical Survey, to the Secretary of the Interior, attached as Ex. 9, Pls.' Mot. for S.J., Doc. # 16.) This nonmineral designation was approved on behalf of the Secretary on October 5, 1934. (*See* Approval Notation, dated Oct. 5, 1934, by First Assist. Secretary of the Interior T.A. Walters on Letter from Director, U.S. Geological Survey, to the Secretary of the Interior, at 2.)

After a number of changes in ownership, the tract of real property was purchased by Williams on February 24, 1993. Soon thereafter, Williams began to extract sand and gravel

from deposits on his land. (*See* Patricia Richards Decl., attached as Ex. 5 to Pls.' Mot. for S.J., Doc. # 16.) These deposits became the focus of an ownership dispute between the Department of the Interior and BedRoc and Williams.

The BLM, a division of the Department of the Interior, issued to Williams two notices of trespass on March 26, 1993, and April 1, 1993, for the removal and sale of the sand and gravel. The BLM issued these notices according to its interpretation of the Pittman Act's reservation of "valuable minerals" as including deposits of such substances. After corresponding with Williams, the BLM issued a Decision on April 23, 1993, finding that Williams had removed and sold federally-owned minerals without the benefit of a mineral contract and was liable for future damages under 43 C.F.R. § 9230.0-7. (*See* Decision at 1, attached as Ex. 4 to Defs.' Brief on Mineral Ownership, Doc. # 20.) The BLM based its decision, in part, on *Watt v. Western Nuclear, Inc.*, 462 U.S. 36, 59, 103 S. Ct. 2218, 76 L. Ed. 2d 400 (1983), where the Supreme Court found that sand and gravel were minerals reserved to the United States under the Stock-Raising Homestead Act of 1916, ch. 9, 39 Stat. 862, *repealed by* Federal Land Policy and Management Act of 1976, Pub. L. 94-579, § 102, 90 Stat. 2744 (1976). (*See* Decision at 1.)

The BLM Decision against Williams was upheld on appeal by the Interior Board of Land Appeals (the "IBLA"), albeit on the basis of the Pittman Act's legislative history and intent, not by analogy to the Stock-Raising Homestead Act. Williams now seeks a determination from this Court that the IBLA and BLM proceedings constituted "arbitrary and capricious" proceedings in violation of section 1(e) of the Administrative Procedures Act, 5 U.S.C. § 706, due to their erroneous interpretation of the disputed sand and gravel as "valuable minerals" reserved to the United States under the Pittman Act. (*See* Complaint, Doc. # 1.)

In the midst of these proceedings, BedRoc acquired the real property from Williams on July 27, 1995. BedRoc continued the removal and sale of the extant sand and gravel deposits. The Department of the Interior similarly asserted claims to these deposits against BedRoc as well. After some litigation, BedRoc was permitted to continue to remove these deposits pursuant to a stipulation with the Department of the Interior. (*See* Stipulation, attached as Ex. 7 to Pls.' Mot. for S.J., Doc. # 20.) The Stipulation, *inter alia*, required BedRoc to deposit a sum of money for each cubic yard of sand or gravel removed, pending final resolution of the title dispute to the deposits. (*See id.*) BedRoc now seeks summary judgment quieting title to the disputed real property and its sand and gravel deposits. (*See* Complaint, Doc. # 1.)

BedRoc's and Williams' claims were joined pursuant to Federal Rule of Civil Procedure 20. *See Desert Empire Bank v. Insurance Co. of North America*, 623 F.2d 1371, 1375 (9th Cir. 1980). In opposing BedRoc's and Williams' claims, the U.S. Government has counter-moved for summary adjudication, seeking a declaration that it is the reserved owner of the deposits. (*See* Defs.' Brief & Opp., Doc. # 26.)

III. DISCUSSION

Determination of the parties' ownership rights to the sand and gravel deposits depends upon whether the disputed sand and gravel constitute "valuable minerals" reserved to the U.S. Government under the Pittman Act. Resolution of this question requires this Court to determine: (1) whether sand and gravel constituted "minerals" for purposes of the Pittman Act; (2) if so, whether they constituted "valuable" minerals; and (3) what effect, if any, the U.S. Geological Survey's nonmineral certification had on the status of the disputed resources.

When determining the meaning of a statute, a federal court must first look to the plain and ordinary meaning of both the disputed language and the statute as a whole. *See Craft v. Campbell Soup Co.*, 161 F.3d 1199, 1201 (9th Cir. 1998). But when the text is ambiguous, the court should examine the statute's legislative history and employ other extrinsic aids in order to divine the statute's meaning. *See Moyle v. Director, Office of Workers' Compensation Programs*, 147 F.3d 1116, 1120 (9th Cir. 1998).

The matter before this Court defies simple resolution through a plain meaning analysis. The parties vigorously disagree as to whether the term "mineral" commonly includes substances such as sand and gravel. In contexts outside the Pittman Act, there has been considerable dispute as to this very issue. *Compare Webster's New World College Dictionary* 863 (3d ed. 1996) (defining "mineral" as "an inorganic substance occurring naturally in the earth and having a consistent and distinctive set of physical properties . . . [or] any substance that is neither vegetable nor animal") *with Miller Land & Mineral Co. v. State Highway Comm'n of Wyoming*, 757 P.2d 1001, 1003-04 (Wyo. 1988) (sand and gravel not "minerals" within natural meaning of word); *Heinatz v. Allen*, 147 Tex. 512, 217 S.W.2d 994, 997 (1949) (same).

Resort to the Pittman Act's legislative history and other tools of statutory construction, however, is more informative. In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 & n. 9, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984), the Supreme Court held that where a statute is silent or ambiguous as to a specific issue, a federal court must defer to a permissible agency interpretation unless it is arbitrary or capricious. In this light, the Department of the Interior's characterization of sand and gravel as "minerals" (*see Earl Williams*, 140 IBLA

295, 302-14 (1997)) under the Pittman Act withstands scrutiny. The Department of the Interior has tracked national sand and gravel production as part of its annual mineral report since at least 1914 (viz., before the promulgation of the Pittman Act). (*See* U.S. Geological Survey, Mineral Resources of the United States 271-83 (1914-19), attached as Exs. 1-6 to Def.'s Opp., Doc. # 26). Moreover, notwithstanding BedRoc's and Williams' reliance on interpretations of written instruments between private parties, *see e.g. Atwood v. Rodman*, 355 S.W.2d 206 (Tex. Civ. App. 1962, writ refused n.r.e.); *Farrell v. Sayre*, 129 Colo. 368, 270 P.2d 190 (1954), federal courts have held that common varieties of gravel are "minerals" for purposes of pre-1955 federal mining claims and the Stock-Raising and Homestead Act of 1916. *See Watt*, 462 U.S. 36, 57-58, 103 S. Ct. 2218, 76 L. Ed. 2d 400 (1983) and cases cited therein.

More problematic, however, is the question of whether the sand and gravel at issue constitute "valuable" minerals for purposes of the Pittman Act. BedRoc and Williams argue that the Pittman Act's term "valuable minerals" should be construed in the same fashion as the term "valuable mineral deposits" in the Mining Law of 1872. *See* 30 U.S.C. § 22. Under the Mining Law, mineral deposits are "valuable" only if they are reasonably marketable or profitable at the time of a patent's issuance. *See United States v. Coleman*, 390 U.S. 599, 602, 88 S. Ct. 1327, 20 L. Ed. 2d 170 (1968); *Lara v. Secretary of Interior of United States*, 820 F.2d 1535, 1541 (9th Cir. 1987). Thus, BedRoc and Williams argue that the sand and gravel deposits on the property were never reserved to the government, since they could not have been profitably mined and marketed in the 1940's (i.e. immediately after the predecessor-in-interest's receipt of a Final Certificate on August 29, 1939). (*See* Pls.' Mot. for S.J., Doc. # 16, Ex. 1.) This is an argument that this Court declines to accept.

It is true that, as BedRoc and Williams contend, "where words are employed in an act which had at the time a well-known meaning in the law, they are used in that sense unless the context requires the contrary." *See Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 115, 60 S. Ct. 1, 84 L. Ed. 110 (1939) (citation omitted). But this Court agrees with the Interior Board of Land Appeal insofar as it held that reference to a single analogous, but unrelated, statute is an unreliable method of divining legislative intent. *See Williams,* 140 IBLA at 303 (citing Norman J. Singer, 2B Sutherland Stat. Const. § 53.05 (5th ed. 1992)). Such references are of significant value only where "analogy is made to several statutes or a general course of legislation." *Id.* When plentiful sister statutes are absent, as in the case *sub judice,* it is best to examine the legislative history and purpose of the disputed statute to discern Congressional intent. *See Collings v. Longview Fibre Co.*, 63 F.3d 828, 832 n.3 (9th Cir. 1995); *Singer, supra,* § 46.07.

Perusal of the Pittman Act's legislative history reveals that Congress did not contemplate the fee simple conveyance of substances such as sand and gravel. First, Congress specifically stated that the Pittman Act's purpose was "to encourage the exploration for and development of artesian and subsurface waters in the State of Nevada." *See* H.R. Rep. No. 66-286, at 1 (1919). Contrary to the BedRoc's and Williams' assertions, however, such activity was meant to reward the husbandry of livestock and crops. *See id.* (stating that bill would remedy prior retardation of "agricultural development in Nevada"); Letter from Alexander T. Vogelsang, Acting Secretary, Department of the Interior, to Senator Reed Smoot, Chairman, Committee on Public Lands (June 24, 1919), *printed in* S. Rep. No. 66-66, at 2 (1919) (stating that bill would ensure that land is "made available for agricultural purposes"). Indeed, Congress repealed the

Act forty years later specifically for its paltry creation of only "three economic farm units." *See* S. Rep. No. 88-1282, at 1 (1964), *reprinted in* 1964 U.S.C.C.A.N. 2699, 2699.

Secondly, the Pittman Act's sponsor, Senator Pittman of Nevada, explicitly stated that the bill was intended to reserve all mineral rights to the Government. The remarks of the sponsor of language ultimately promulgated into law are an authoritative guide to a statute's construction. *See North Haven Bd. of Educ. v. Bell,* 456 U.S. 512, 526-27, 102 S. Ct. 1912, 72 L. Ed. 2d 299 (1982); *United States v. Otherson,* 637 F.2d 1276, 1283 (9th Cir. 1980). During an exchange with Senator Thomas of Colorado, Senator Pittman explained that the reservation clause was meant to reserve to the United States the full spectrum of minerals:

> Mr. THOMAS. Mr. President, section 6 of the proposed bill provides for the reservation from the operating clause of the patent of "all the coal and other valuable minerals in the lands so entered and patented." I wish to inquire of the Senator from Nevada whether that reservation is broad enough, or is intended to be broad enough, to include veins of gold, silver, lead, and other metalliferous deposits?
>
> Mr. PITTMAN. In line 25, at the bottom of page 3, in section 6, the bill says:
>
> The coal and other valuable mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.
>
> Mr. THOMAS. If it does include that class of deposits, I can foresee a great deal of complication and trouble arising from the attempt to prospect for valuable mineral deposits on these lands under the

mining act of 1872 . . . . I believe it would be very much better for the Government, for the prospector, and for the operator under the provisions of this bill, if there were no such exception; and I shall therefore offer an amendment to eliminate section 6 from the bill.

Mr. PITTMAN. Mr. President, before the Senator does that, I trust that he will consider the matter for a minute. This bill, as it was originally prepared by me, did not contain that reservation. When a similar bill was introduced in the House of Representatives, at my request, it met with serious opposition on the very ground that it might be used for the purpose of grabbing mineral lands. There was not the slightest chance on earth of passing such a bill through the House of Representatives if there was the slightest suspicion that the bill could be used for the *purpose of acquiring mineral lands under the guise of obtaining agricultural lands.* This reservation from all characters of agricultural entries is usual; and, *without discussing the question of whether or not it is a good provision, I must say that it is the policy of Congress, as I see it, not to permit the acquisition of any character of minerals through any agricultural entry.*

53 Cong. Rec. S705, S707 (1916) (emphasis added). Following this exchange, Senator Thomas' amendment to strike the reservation clause was rejected. *See id.* at S712.

In light of these Congressional proceedings, this Court is not persuaded by BedRoc's and Williams' contention that the reservation of only "valuable" minerals would exclude substances such as sand or gravel. "The cardinal principle of statutory construction is to save and not to destroy. It is [a court's] duty to give effect, if possible, to every clause and

word of a statute . . . ." *United States v. Menasche,* 348 U.S. 528, 538-39, 75 S. Ct. 513, 99 L. Ed. 615 (1955) (quotation omitted). However, this doctrine must be executed in a manner that advances and reflects the legislative history and purpose of the act. *See Estate of Reynolds v. Martin,* 985 F.2d 470, 473 (9th Cir. 1993); *United States v. Canals-Jimenez,* 943 F.2d 1284, 1287 (11th Cir. 1991). In view of Congressional hostility to fraudulent acquisitions of *any* mineral resources under the guise of agricultural land patents, it seems that the reference to "valuable" minerals merely implicates substances with desirable uses. *Cf. Northern Pac. Ry. Co. v. Soderberg,* 188 U.S. 526, 536-37, 23 S. Ct. 365, 47 L. Ed. 575 (1903) (discerning legislative intent to reserve geological deposits useful to the arts or manufacturing processes). Sand and gravel are obviously substances widely used in this nation's industrial pursuits. *See, e.g.,* Daniel C. Brown, *Porous Pavement,* Pit & Quarry, May 1, 1995, *available in* 1995 WL 12499285. Thus, it seems logical to place these sub-stances within the ambit of the term "valuable minerals." Alternatively, even if a literal reading of the term would suggest a limiting construction, this Court must again eschew such an interpretation where it lies contrary to legislative intent. *See* Singer, *supra,* § 46.07.

BedRoc's and Williams' reliance on the real property's nonmineral designation is similarly misplaced. BedRoc and Williams contend that the nonmineral designation in 1934 (*see* Letter from Director, U.S. Geological Survey, to the Secretary of the Interior, Pls.' Mot. for S.J., Ex. 9, Doc. # 16.) indicates that the U.S. Government did not consider sand and gravel to be reserved substances under the Pittman Act. Prior to conveyance, Pittman Act patents were limited to "unreserved, unappropriated, nonmineral, nontimbered public lands." *See* H. Rep. No. 66-286, at 1. However, the

U.S. Supreme Court has observed that the term "mineral lands" traditionally included those lands that were "chiefly" valuable for their mineral deposits. *See Northern Pac. R. Co.*, 188 U.S. at 536-37, 23 S. Ct. 365. Thus, it seems that if a parcel of land was adjudged valuable mainly for its non-mining purposes (e.g. agricultural exploitation) at the time of certification, it could be labeled "nonmineral," notwithstanding the actual presence of mineral substances reserved to the Government. Indeed, the legislative debates clearly bear out this interpretation. Representative Evans of Nevada and Representative Kinkaid of Nebraska, who presented the proposed Pittman bill to the U.S. House of Representatives, clarified this seeming contradiction:

> Mr. BLANTON: Mr. Speaker, re-serving the right to object, will the gentleman permit and agree to an amendment to reserve the mineral rights of the Government?
>
> Mr. KINKAID: They are reserved.
>
> Mr. EVANS: They are already reserved.
>
> Mr. BLANTON. The way I caught the bill it just spoke of the lands as nonmineral lands. Many lands classified as nonmineral and nonagricultural lands are, as a matter of fact, mineral and agricultural in some instances.
>
> Mr. TAYLOR of Colorado. Those reservations are made now by general law. It is not necessary to put that in. You cannot get oil land by homesteading nowadays.
>
> Mr. BLANTON. Is it all reserved?
>
> Mr. TAYLOR of Colorado. Yes.

> Mr. BLANTON. These lands come under the general reservation?
>
> Mr. TAYLOR. Yes.
>
> Mr. BLANTON. These homesteads to-day do not contain any oil?
>
> Mr. TAYLOR of Colorado. When you get a homestead, you do not get any oil under it. The oil that may be underneath it is reserved.
>
> Mr. BLANTON. This is not with respect to any homestead rights. It carries with it the right to exploitation with regard to the reclaiming of arid lands.
>
> Mr. TAYLOR of Colorado. Yes; by expending a lot of money and digging an artesian well.
>
> Mr. BLANTON. If the mineral rights are properly reserved, I have no objection.
>
> Mr. EVANS of Nevada. They are properly reserved. I am glad the gentleman has asked the question.

58 Cong. Rec. H6468, H6469 (1919). The statements of the committeeman in charge of presenting a bill to the House should be "taken as the opinion of the committee about the meaning of the bill." Singer, *supra*, § 48.14. Thus, BedRoc's and Williams' reliance on the nonmineral certification are otiose to the issue of sand and gravel ownership.[1]

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[1] The Court also finds irrelevant BedRoc's and Williams' strenuous claims that the sand and gravel were exposed, rather than

(continued...)

The Court's findings are reinforced by the "the established rule that land grants are construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it." *See Watt,* 462 U.S. at 59, 103 S. Ct. 2218 (quotations omitted). BedRoc's and Williams' protestations for a more liberal application of this doctrine are unfounded. A looser standard may apply only to federal inducements to "'undertake and accomplish great and expensive enterprises or works of a quasi-public character,'" such as those required in the construction of the railroads. *Leo Sheep Co. v. United States,* 440 U.S. 668, 683, 99 S. Ct. 1403, 59 L. Ed. 2d 677 (1979) (quoting *United States v. Denver & Rio Grande Ry.,*

(...continued)

subsurface, deposits. (*See* Pls.' Mot. for S.J., Doc. # 16, at 15.) Senator Pittman made clear that a deposit's location did not affect the Government's rights:

> [I]f these minerals are disclosed on the surface of the ground, the ground is not subject to this bill. If they are not disclosed on the surface of the ground, still the Government desires to prevent any fraud on the Government in the acquisition of this land under the guise of entering it for agricultural purposes, while at the same time it may be to acquire large bodies of coal or other valuable minerals that are apparently concealed under the surface, but are known to the entryman.

53 Cong. Rec. S705, S707 (1916).

150 U.S. 1, 14, 14 S. Ct. 11, 37 L. Ed. 975 (1893)). Patents under the Pittman Act, while certainly of benefit to Nevada agricultural production and state population growth, do not rise to the level of the mammoth construction efforts and great transformational effects railroad systems have played in our nation's history. *See, e.g.* Deborah A. Ballam, *The Evolution of the Government-Business Relationship in the United States: Colonial Times to Present,* 31 Am. Bus. L. J. 553, 579-82 (1994) (noting national economic effects of railroad construction).

IV. CONCLUSION

IT IS THEREFORE ORDERED that Plaintiffs BedRoc Limited, LLC's and Earl Williams' Motion for Summary Judgment (Doc. # 16) is DENIED.

IT IS FURTHER ORDERED that Defendants United States of America's, Interior Secretary Bruce Babbit's, the Department of the Interior's, the Bureau of Land Management's, and Area Manager Curtis L. Tucker's Brief in Support of Mineral Ownership and Opposition (Doc. # 26), requesting a judicial declaration finding the United States to be the owner of all valuable minerals underlying BedRoc's real property, including the sand and gravel deposits, is GRANTED, and that Judgment is hereby entered in favor of Defendant/Counterclaimants United States of America, Interior Secretary Bruce Babbit, the United States Department of the Interior, the Bureau of Land Management, and Curtis L. Tucker and against Plaintiff/Counterdefendants BedRoc Limited, LLC and Earl Williams.

/s/ Philip M. Pro
CHIEF JUDGE
UNITED STATES DISTRICT COURT

LAS VEGAS, NEVADA

MAY 24, 1999

APPENDIX C

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals

EARL WILLIAMS

IBLA 93-414

Decided October 6, 1997

MULLEN, *Administrative Judge:*

Earl Williams has appealed an April 23, 1993, Decision issued by the Area Manager, Caliente Resource Area, Nevada, Bureau of Land Management (BLM or Bureau), finding Williams had committed mineral material trespass when he removed sand and gravel from a 560-acre tract of land owned by Williams.[1] The Decision was based upon a

[1] A deed executed by Franklin B. and Mary B. Snyder on Feb. 24, 1993, conveyed the tract to Earl C. Williams and Ruth Williams. Earl and Ruth Williams conveyed the tract to the Ron and Lynn Williams Family Trust on Mar. 8, 1993. Earl and Ruth Williams also executed a Short Form Deed of Trust to Robert W. Steadman, Trustee, Steadman Trust, on Mar. 18, 1993. In an Oct. 27, 1993, letter to the Assistant Regional Solicitor, counsel for Williams states that the deed dated Mar. 8, 1993, was not recorded until May 7,

(continued...)

finding that the Pittman Act patent of the tract reserved the minerals to the United States.[2]

The land owned by Williams is situated in the E 1/2, E 1/2 W 1/2 sec. 24 and the E 1/2 NE 1/4 sec. 25, T. 11 S., R. 62 E., Mount Diablo Meridian, Lincoln County, Nevada. The surface estate of this tract was conveyed to Williams' predecessor-in-interest pursuant to the Pittman Act by United States Patent No. 1107339 issued March 12, 1940. Section 8 of the Pittman Act reserved to the United States "all the coal and other valuable minerals in the lands so entered and patented."

The Bureau issued notices of trespass for the removal and sale of sand and gravel on March 26, 1993, and April 1,

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(...continued)

1993. Counsel asserts that title was vested in Williams when the trespass notices were issued and that Williams has standing to appeal.

[2] The Act of Oct. 22, 1919, 41 Stat. 293-295; 43 U.S.C. §§ 351-355 (1958), is commonly referred to as the Pittman Act or the Pittman Underground Water Act of 1919. By Act of Sept. 22, 1922, 42 Stat. 1012, 43 U.S.C. § 356 (1958), Congress authorized the Secretary of the Interior to grant extensions of time "not exceeding two years" to permittees under the Pittman Act for "beginning, recommencement, or completion" of operations for the development of underground waters. The Pittman Act was repealed by the Act of Aug. 11, 1964, Pub. L. No. 88-417, 78 Stat. 389, subject to valid existing rights and obligations, and without prejudice to the processing of valid applications for permits on file at that date. See 29 Fed. Reg. 13387 (Sept. 26, 1964).

1993. On April 13, 1993, Williams met with BLM and questioned BLM's determination that the sand and gravel he had removed was "valuable mineral" within the meaning of the reservation in the patent. At BLM's request, Williams submitted an April 16, 1993, letter stating that "[t]his property is my own personal property and I do not feel that these are valuable minerals. Once we remove the over burdens and the fact that it is 70 miles from Las Vegas, it is not valuable to anyone."

After considering Williams' response, BLM issued its April 23, 1993, Decision that Williams removed and sold Federally owned mineral material without the benefit of a mineral materials contract. In its Decision, BLM cited *Watt v. Western Nuclear, Inc.*, 462 U.S. 36, 59 (1983), to support its conclusion that the sand and gravel deposit on Williams' property was reserved to the United States. In Western Nuclear, the Supreme Court found sand and gravel to be "mineral reserved to the United States in lands patented under the SRHA [Stock-Raising Homestead Act]." Id.[3] The Bureau also found Williams in violation of 43 C.F.R. § 9239.0-7, which provides:

> The extraction, severance, injury, or removal of . . . mineral materials from public lands under the

---

[3] The Act of Dec. 29, 1916, 39 Stat. 862, 43 U.S.C. §§ 291-301 (1970), as amended, popularly known as the "Stock-Raising Homestead Act," was repealed by the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. . No. 94-579, Title VII, § 702, Oct. 21, 1976, 90 Stat. 2787. Section 701(a) of FLPMA provided that "[n]othing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act."

> jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to prosecution for such unlawful acts.

Williams' trespass was deemed to be innocent. However, Williams was also advised that he should cease sand and gravel removal immediately, and that continued removal without a mineral materials contract would be considered willful trespass.[4]

On appeal, Williams contends that when the Government issued a Final Certificate on August 29, 1939, and Patent No. 1107339 on March 12, 1940, his predecessors-in-interest acquired the sand and gravel. The patent was issued pursuant to the Pittman Act, which provides in pertinent part:

> That the Secretary of the Interior is hereby authorized to grant to any citizen . . . a permit, which shall give the exclusive right, for a period not exceeding two years, to drill or otherwise explore for water beneath the surface . . . of unreserved, unappropriated, nonmineral, nontimbered public lands of the United States in the State of Nevada not known to be susceptible of successful irrigation at a reasonable cost from any known source of water supply . . . And pro-vided further, That said land shall theretofore have been designated by the

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[4] On June 14, 1993, the Assistant Regional Solicitor submitted a stipulation entered into by Williams and BLM permitting continued production of sand and gravel pending appeal.

> Secretary of the Interior as subject to disposal under the provisions of this act.
>
> SEC. 2. That the Secretary of the Interior is hereby authorized, on application or otherwise, to designate the lands subject to disposal under the provisions of this act: Provided, however, That where any person . . . qualified to receive a permit under the provisions of this act shall make application for such permit upon land which has not been designated as subject to disposal under the provisions of this act . . . such application . . . shall be . . . suspended until it shall have been determined by the Secretary of the Interior whether said land is actually of that character. That during such suspension the land described in the application shall not be disposed of; and if the land shall be designated under this act, then such application shall be allowed; otherwise it shall be rejected, subject to appeal.
>
> . . . .
>
> SEC. 8. That all entries made and patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal and other valuable minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other valuable mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

In his Statement of Reasons (SOR), Williams contends that BLM's reliance upon *Watt v. Western Nuclear, Inc.*,

supra, is misplaced because the Court's interpretation of the SRHA in *Western Nuclear* is not applicable to Pittman Act entries or patents. (SOR at 4.) He argues that no land entry could be made under the Pittman Act until after the land had been deemed to be "nonmineral," noting that if an application for a permit was filed for land which had not been designated as nonmineral, the application was suspended until the land had been designated nonmineral in character, and an application would be rejected if the land was found to be "mineral in character." Williams further argues that only "valuable minerals," locatable under the 1872 mining laws, were reserved to the Federal Government in a Pittman Act patent. (SOR at 4-7.)

Williams notes that on October 2, 1934, the Director of the Geological Survey certified that the land patented to Williams' predecessor-in-interest was nonmineral and recommended designating it as suitable for disposal under the Pittman Act. (SOR at 7; Appellant's Exhibit (Ex.) 1: Letter dated Oct. 2, 1934, from the Director, U.S. Geological Survey, to the Secretary of the Interior.) The nonmineral designation was approved on behalf of the Secretary on October 5, 1934. (Appellant's Ex. 1: Notation dated Oct. 5, 1934, by First Assistant Secretary of the Interior T.A. Walters on Letter dated Oct. 2, 1934, from the Director, U.S. Geological Survey, to the Secretary of the Interior, at 2.) Williams contends that after this designation was approved, a filing of final proof and issuance and approval of the Final Certificate rendered the nonmineral designation irrevocable. Williams reasons that this designation rendered the mineral reservation in the patent inoperative. (SOR at 8.) He concludes that if Congress had intended to reserve all minerals from Pittman Act patents, including minerals discovered after patent issued, it would have expressed an intent to do so. (SOR at 10.) Williams

urges a finding that a patent issued pursuant to the Pittman Act conveyed all minerals not known to exist when the equitable title vested in the patent recipient. (SOR at 10-11.)

Williams contends that the difference between the SRHA reservation of "all the coal and other minerals," and the Pittman Act reservation of "all the coal and other valuable minerals," is significant. He asserts that "valuable minerals," other than coal, were locatable under the 1872 mining laws. He then argues that the sand and gravel deposit on his land had no special value when the land was taken to patent, and was therefore not locatable under the 1872 mining laws at that time, and that the land was properly identified as not being mineral in character. This characterization agrees with the conclusion made by the Director of the U.S. Geological Survey when the Director declared the land to be nonmineral. Williams contends that, as a result of this determination, the sand and gravel on his land was not included in the mineral reservation found in the patent. Williams argues that the term "valuable minerals" distinguishes the Pittman Act reservation from the reservation found in SRHA patents, which extends to all other minerals, regardless of their value at the time of patent. (SOR at 11-12.)

As further support for his argument that the SRHA and Pittman Act mineral reservations are not analogous, Williams notes that an SRHA "entry" could be made on any "unreserved public land" including mineral land, and that "all the coal and other minerals" were reserved to the United States. Williams notes that this procedure differs materially from the procedure for making an entry pursuant to the Pittman Act, because the Pittman Act prohibited "entry" unless and until the land had been designated nonmineral. (SOR at 12-13.)

Williams contends that the true test of whether a mineral deposit is owned by the Federal Government is whether the mineral deposit was locatable under the 1872 mining laws when the Pittman Act permit was issued. (SOR at 15.) He notes that the Materials Act of July 31, 1947, as amended, 30 U.S.C. §§ 601-604 (1994), excluded deposits of sand and gravel and other named minerals materials from location under the 1872 mining laws, and after the passage of the Materials Act of July 31, 1947, sand and gravel deposits were not "valuable deposits" that could be located under the 1872 mining laws unless they had some property or characteristic that gave them a special value. Williams asserts that between October 22, 1919 (the date of enactment of the Pittman Act) and July 31, 1947 (the date of the Materials Act) sand and gravel and other common varieties were not locatable under the 1872 mining laws unless they had distinct characteristics giving them special value. Therefore, Williams reasons, if any entry was allowed, and final certificate or patent issued prior to 1947, the Pittman Act mineral reservation would not have included sand, gravel, or other "common varieties" if the deposits were not known to have special values, including a profitable market, prior to issuance of final certificate. Williams asserts that the final certificate, entry, and patent to his land all predate the 1947 Act, and if BLM cannot demonstrate that a valuable deposit of sand and gravel was known to exist prior to issuance of the final certificate, the statutory mineral reservation does not include sand and gravel. (SOR at 15-16.)

Mineral material cannot be removed from lands administered by BLM without prior authorization in the form of a mineral material sales agreement or permit issued under the Materials Act of July 31, 1947, 30 U.S.C. §§ 601, 602 (1994), and Departmental regulations. *See Richard Connie*

Nielson v. BLM, 125 IBLA 353, 363 (1993); *Frehner Construction Co.*, 124 IBLA 310 (1992); *Curtis Sand & Gravel Co.*, 95 IBLA 144, 161, 94 Interior Dec. 1, 10 (1987). Williams does not contend that BLM had authorized the removal of the sand and gravel, and the sole question on appeal is the ownership of the sand and gravel. The answer to that question depends on whether the sand and gravel was reserved when the land was patented. The question of the ownership of sand and gravel on lands patented under the Pittman Act is one of first impression.

The BLM Decision assumes a connection between the mineral reservation provisions of section 9 of the SRHA and section 8 of the Pittman Act. An examination of the provisions of the two Acts shows that they are similarly structured and contain similar language. The Bureau apparently concluded that the Supreme Court's holding in *Western Nuclear* construing section 9 of the SRHA and finding sand and gravel reserved in SRHA patents is also applicable to the mineral reservation in Pittman Act patents. (Decision at 1.) In our view, we cannot rely on *Watt v. Western Nuclear, Inc., supra*, to support BLM's Decision, because the holding in *Watt v. Western Nuclear, Inc.* applies to the reservation of sand and gravel in patents issued pursuant to the SRHA and does not reflect consideration of the ownership of sand and gravel in lands patented under the Pittman Act.

We conclude that sand and gravel was reserved to the United States in Pittman Act patents. Our conclusion is based on the intent of Congress, as reflected in the legislative history of that Act.

It is a well established rule of statutory construction that reliance on analogous legislation is of limited probative value when interpreting the intent of lawmakers:

> Caution must be exercised in applying the rule that one statute will be interpreted to correspond to analogous but unrelated statutes for the reason that by way of contrast an inclusion or exclusion may show an intent or convey a meaning exactly contrary to that expressed by analogous legislation. Therefore, the rule tends to be of greater value where analogy is made to several statutes or a general course of legislation.
>
> The interpretation of one statute by reference to an analogous but unrelated statute is considered an unreliable means of discerning legislative intent. Consequently, the chief value of the rule is to be found in the fact that it serves as a criterion for showing the general course of legislative policy. (Footnotes omitted.)

Norman J. Singer, 2B Sutherland Stat Const § 53.05 (5th ed. 1992). Two additional canons of statutory construction should be considered at this point in our analysis. First, because "[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent, . . . each part or section should be construed in connection with every other part or section so as to produce a harmonious whole." Norman J. Singer, 2A Sutherland Stat Const § 46.05 (5th ed. 1992). Second, although the plain meaning rule focuses on the importance of a literal reading of the language of a statute, a "literal interpretation of the words . . . should not prevail if it creates a result contrary to the apparent intention of the legislature[.]" Id. at § 46.07. At the same time, the language and structure of a statute should be carefully considered, especially when the Act being considered is derived from carefully considered legislative compromises. Community for Creative Non-Violence v. Reid, 490 U.S. 730, 748 n.14 (1989).

The legislative record indicates that the mineral reservation provisions of the Pittman Act were neither accidental inclusions nor mere boilerplate. They were carefully crafted and thoroughly debated by the Congress. It is clear that Congress considered them to be a crucial part of the Act.

The record shows that Senator Key Pittman of Nevada introduced the precursor of the Pittman Underground Water Act of 1919 on December 29, 1914. That bill, known as S. 7109, was reported favorably unanimously by the Committee on Public Lands of the Senate on February 3, 1915. S. Rep. No. 64-4, at 1 (1915). An identical bill, known as H.R. 21377, was introduced in the House of Representatives by Representative Carl Hayden of Arizona, at the request of Mr. Pittman. The House version, H.R. 21377, was referred to the Committee on Public Lands, which reported it favorably, with amendments, on February 18, 1915.[5] H.R. Rep. No. 63-1418, at 2 (1915). The House Report describes H.R. 21377 as follows:

> The purpose of the bill is to encourage the discovery of artesian water on the public domain in the State of Nevada, without appropriation or expense on the part of the Government. The bill is

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[5] Neither S.7109 nor H.R. 21377 contained a provision reserving minerals to the United States. House bill No. 21377 was amended in committee to change the allocation of funds received at public auction from the sale of remaining lands not patented to Pittman Act permittees. Money received from the sale of the remaining lands was to be deposited in a reclamation fund pursuant to the Reclamation Act of June 17, 1902, 32 Stat. 388. Several additional amendments were made in committee; none is at issue in this appeal.

local in effect and extends only to the State of Nevada, where peculiar conditions seem to require such form of development.

According to the census of 1910 the land of Nevada is segregated as follows:

	Acres
Total area	70,285,440
Reserved by the Government as forest reserves, Indian reservations, etc.	12,068,250
Held in private ownership	2,714,757
Unreserved and unappropriated	55,502,439

According to the census of 1910 the population of the State of Nevada is 81,875. There is very little surface water in the State and practically all that does exist has been appropriated. The future development of the agricultural land of the State seems to depend largely upon the development of artesian water. Congress has time and again refused to appropriate money for the exploration and development of artesian water, and therefore if the vast areas of arid lands in the State are to be developed it must be done through the individual and with private capital.

By reason of the peculiar condition that exists in the State it is not to be expected that the remaining great areas of public land will be developed under the homestead or other existing laws.

H.R. Rep. No. 63-1418, at 2 (1915). Secretary of the Interior Franklin K. Lane submitted reports to the Senate and House Committees recommending enactment of S.7109 and H.R. 21377 and observing:

> The large surface areas, small population, and comparatively small amount of assessable property at present in the State, together with the limited number of wagon roads, railroads, and other transportation facilities, indicate strongly the need of further development in this direction and the necessity of Federal assistance.

Letter dated Jan. 7, 1915, from Franklin K. Lane to Hon. Henry L. Myers, Chairman, Committee on Public Lands, United States Senate, as printed in H.R. Rep. No. 63-1418, at 2, 3 (1915). The bills identified as S.7109 and H.R. 21377 died without consideration upon the adjournment of the 63rd Congress. Senator Pittman introduced S.2519, a bill identical to S.7109, in the First Session of the 64th Congress. Senate Bill 2519 was reported favorably on December 17, 1915. As reported, the bill contained a provision enumerated as section 6, which is identical to the section 8 mineral reservation provision in the Pittman Act, when it was enacted by Congress on October 22, 1919.[6]

Senate Bill 2519 was considered by the Senate, sitting in Committee of the Whole, on January 8, 1916. Senator Pittman, the sponsor of the bill, was responsible for explaining the bill to his colleagues and managing debate. 54 Cong. Rec. 705 (1916). The floor debate is revealing and illustrates the careful consideration given by the Senate to

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[6] 53 Cong. Rec. S707 (1916).

the mineral reservation provision of S.2519 and the reasons Senator Pittman and the Committee on Public Lands saw fit to recommend its inclusion in the bill.[7]

The debate quickly focused on the intent, purpose, and scope of the mineral reservations in section 6 of S.2519. The

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[7] It is well settled that special import is accorded Senator Pittman's explanations and assertions. He was discussing a bill he had introduced and was also managing floor debate during the Senate consideration of that bill. See generally Norman J. Singer, 2A Sutherland Stat Const § 48.14 (5th ed. 1992), which discusses the weight given to statements of the committeeman in charge of a bill during legislative debate:

> When a bill is reported out of a standing committee, the member in charge of the bill, normally the chairman, explains its meaning to the house. He also answers questions concerning the meaning of particular sections or phrases. The committeeman in charge has the duty of defending the bill, has familiarized himself with the situation sought to be remedied by the bill and his statements may be taken as the opinion of the committee about the meaning of the bill
>
> . . . .
>
> His remarks upon presenting the bill to the house and his answers to questions asked by members will be considered by the courts in construing provisions of the bill subsequently enacted into law. These statements are regarded as being like supple-mental committee reports and are accorded the same weight as formal committee reports."

See also Duplex Printing Press Co. v. Deering, 254 U.S. 443, 474-475 (1921) (explanatory supplemental statements made by a member of Congress in charge of a bill in its course of passage may be resorted to in construing an Act of Congress).

following exchange took place between Senator Thomas of Colorado and Senator Pittman:

> Mr. THOMAS. Mr. President, section 6 of the proposed bill provides for the reservation from the operating clause of the patent of "all the coal and other valuable minerals in the lands so entered and patented." I wish to inquire of the Senator from Nevada whether that reservation is broad enough, or is intended to be broad enough, to include veins of gold, silver, lead, and other metalliferous deposits?
>
> Mr. PITTMAN. In line 25, at the bottom of page 3, in section 6, the bill says:
>
> The coal and other valuable mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.
>
> Mr. THOMAS. If it does include that class of deposits, I can foresee a great deal of complication and trouble arising from the attempt to prospect for valuable mineral deposits on these lands under the mining act of 1872, which is confined to lands upon the public domain, and which requires certain preliminary steps to be taken before the right to locate can be exercised. I believe it would be very much better for the Government, for the prospector, and for the operator under the provisions of this bill, if there were no such exception; and I shall therefore offer an amendment to eliminate section 6 from the bill.
>
> Mr. PITTMAN. Mr. President, before the Senator does that, I trust that he will consider the matter for a minute. This bill, as it was originally prepared by

me, did not contain that reservation. When a similar bill was introduced in the House of Representatives, at my request, it met with serious opposition on the very ground that it might be used for the purpose of grabbing mineral lands. There was not the slightest chance on earth of passing such a bill through the House of Representatives if there was the slightest suspicion that the bill could be used for the purpose of acquiring mineral lands under the guise of obtaining agricultural lands. This reservation from all characters of agricultural entries is usual; and, without discussing the question of whether or not it is a good provision, I must say that it is the policy of Congress, as I see it, not to permit the acquisition of any character of minerals through any agricultural entry.[8]

> In my opinion, if the Senator should carry such an amendment as that he would destroy the bill. It would be subject to a suspicion which I had not in mind at the time I originally introduced the bill, but which might very well be entertained. I certainly ask him to allow the bill to remain in the form which it has been approved by the Public Lands Committees of both bodies and by the Department of the Interior.

53 Cong. Rec. S707 (1916) (emphasis added). The debate continued with Mr. Thomas' reply.

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[8] We observe that in his Apr. 15, 1993, letter Williams states that the sand and gravel on his patented lands was not exposed, and that it was necessary to remove overburden before mining the sand and gravel deposit.

> Mr. THOMAS. Will the Senator please tell me how a citizen of the United States can exercise his right of acquiring a vein of gold, silver, lead, or other metalliferous deposit upon or within a 640-acre tract that is designed to reward the finder of water in the area which is included in his permit?
>
> Mr. PITTMAN. I may answer, if the Senator will permit me, by saying that if a patent were granted for agricultural purposes, including the minerals, the prospector would be in exactly the same position with regard to that particular piece of land. Undoubtedly, if the minerals under the land are not exposed they are not subject to location either by the man who owns the surface right under this bill or by outside prospectors. In neither case are the minerals subject to location under the mining law; but the Government by this bill reserves those minerals. It segregates them from the lands primarily granted for agricultural purposes . . . .

Id. (emphasis added). The Honorable Senator spoke further.

> Mr. THOMAS. I am aware, of course, of the effect of the measure in that it provides that the Government shall retain title to virtually everything except the surface of the ground and such rights as are inseparable from its use for agricultural purposes. It appears to me, however, that the practical operation of this section would be, and I think it ought to be, to confer upon the successful prospector for water the metalliferous deposits, if any, which may be within his ground. At the same time, if not excluded, it may prove a fruitful source of litigation. I think the bill would be a great deal better if these reservations did not appear, and if, as to land classified as agricultural land –because I

presume that is the only land upon which these permits would be issued –the bill should provide for acquisition of complete title to 640 acres as a reward for developing its subterranean water courses.

Mr. PITTMAN. Mr. President, I believe that a person who goes to the expense of prospecting for artesian water in the State of Nevada is entitled as a matter of right to everything which is contained in his land. I would favor that if I thought it would pass the bill; but I am confident that the inclusion of any such right in this grant would mean the destruction of the bill.

. . . [I]f these minerals are disclosed on the surface of the ground, the ground is not subject to this bill. If they are not disclosed on the surface of the ground, still the Government desires to prevent any fraud on the Government in the acquisition of this land under the guise of entering it for agricultural purposes, while at the same time it may be to acquire large bodies of coal or other valuable minerals that are apparently concealed under the surface, but are known to the entryman.

As I have said before, I think the entryman should have whatever is in his land; but I assure . . . Senator [Thomas], from having studied this question, from the experience I have had in the House with this bill, from the expressions by the leaders of both sides of the House of Representatives, that I believe if the Senator's amendment carries the bill will die; and I certainly would rather have what I can get for the people of our State than to stand here on a technical question

trying to get more, with the probability of losing all.
Id.

Senator Thomas's amendment to strike section 6 of S.2519 was considered and rejected by the Senate. The Senate agreed to amend section 5 of the bill by striking a provision which would have distributed a percentage of certain monies from the sale of Pittman Act lands to the State of Nevada. As amended, S.2519 was passed by the Senate. 53 Cong. Rec. S712 (1916).

Senate Bill 2519 was sent to the House of Representatives, where it was referred to the Committee on Irrigation of Arid Lands. The Committee reported S.2519, recommending passage by the House and including a May 18, 1916, letter to Committee Chairman W.R. Smith, from Interior Secretary Franklin K. Lane which stated, in part: "As finally passed by the Senate some changes were made in . . . [S.2519], notably as to the disposition of receipts and reservations of minerals in all patents issued. These amendments are, in my opinion, an improvement upon the original measure, and I have no objection to interpose thereto." H. Rep. No. 64-731, at 2 (1916). The bill died without consideration upon the adjournment of Congress. Senator Pittman introduced S.27, which was identical to S.2519, in the 65th Congress, and it also died without consideration upon the adjournment of Congress.[9]

In the 66th Congress Senator Pittman again introduced a bill for the reclamation of arid lands in the State of Nevada. The bill, designated as S.9, was reported with amendments by the Committee of Public Lands and considered by the

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[9] S. Rep. No. 65-170, at 1 (1917).

Senate on July 8, 1919.[10] The mineral reservation provision in S.9 was renumbered section 8 but otherwise was identical to the provision enumerated as section 6 in S.2519.[11] Senate Bill 9 was passed by the Senate with no further debate on the section providing for a mineral reservation and referred to the House for consideration.[12]

The House Committee on Irrigation of Arid Lands reported S.9 without amendment on September 4, 1919. The Committee Report reads in pertinent part:

> Section 8 of the bill contains the same reservations of minerals, with the facility for prospecting for and developing and mining such minerals as was provided in the 640-acre grazing homestead act which was passed by Congress.[13]
>
> The bill only applies to unreserved, unappropriated, non-mineral, nontimbered public lands of the United States in the State of Nevada not known to be susceptible of successful irrigation at a reasonable cost from any known source of water supply. In other words, it applies to land that there is no substantial hope of improving and cultivating in any other way.

H. Rep. No. 66-286, at 1 (1919). The House considered S.9 on October 6, 1919. Representative Kinkaid of Nebraska

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[10] S. Rep. No. 66-66 (1919).

[11] 58 Cong. Rec. S2268 (1919).

[12] Id.; see also 58 Cong. Rec. H2333 (1919).

[13] This is a reference to the Stock Raising Homestead Act of Dec. 29, 1916, 39 Stat. 862, 43 U.S.C. § § 291-301 (1970).

presented the bill for the Committee, with the assistance of Representative Evans of Nevada. Three times during the debate questions were raised regarding the mineral reservation provisions. In the first instance, Representative Blanton offered an amendment "to reserve the mineral rights of the Government[.]" Mr. Kinkaid replied: "They are reserved." The following colloquy then ensued:

> Mr. EVANS of Nevada. They are already reserved.
>
> Mr. BLANTON. The way I caught the bill it just spoke of the lands as nonmineral lands. Many lands classified as nonmineral and nonagricultural lands are, as a matter of fact, mineral and agricultural in some instances.
>
> Mr. TAYLOR of Colorado. Those reservations are made now by general law. It is not necessary to put that in. You cannot get oil land by homesteading nowadays.
>
> Mr. BLANTON. Is it all reserved?
>
> Mr. TAYLOR of Colorado. Yes.
>
> Mr. BLANTON. These lands come under the general reservation?
>
> Mr. TAYLOR. Yes.
>
> Mr. BLANTON. These homesteads to-day do not contain any oil?
>
> Mr. TAYLOR of Colorado. When you get a homestead, you do not get any oil under it. The oil that may be underneath it is reserved.
>
> Mr. BLANTON. This is not with respect to any homestead rights. It carries with it the right to exploitation with regard to the reclaiming of arid lands.

> Mr. TAYLOR of Colorado. Yes; by expending a lot of money and digging an artesian well.
>
> Mr. BLANTON. If the mineral rights are properly reserved, I have no objection.
>
> Mr. EVANS of Nevada. They are properly reserved.

58 Cong. Rec. H6469 (1919). Later in the debate, Representative Gard of Ohio, concerned that there might be something "concealed in the bill by which the Government might be defrauded out of valuable land, [or there might be] obscure and ambiguous language by which the Secretary of the Interior may not at all times have the proper jurisdiction or control of the allotment of the land," offered an amendment intended to vest the Secretary of the Interior with ". . . continuing authority . . . until the final allotment is made" to the permittee. 58 Cong. Rec. H6470 (1919). Representative Gard's amendment was opposed as unnecessary and an attempt to "send [the] bill back to conference." 58 Cong. Rec. H6471 (1919). A vote was taken and Representative Gard's amendment was rejected.

Still later, Representative Jones of Pennsylvania asked whether the term "valuable mineral deposits" would include oil and gas. Mr. Kinkaid replied in the affirmative that "certainly, those are all minerals." *Id.* Senate Bill 9 was passed by the House. 58 Cong. Rec. H6472 (1919). On October 9, 1919, the Speaker of the House and the President of the Senate signed enrolled bill S.9, which was then forwarded to the President for signature. Senate Bill 9 was approved by the President on October 22, 1919.

The Congressional policy reflected in the legislative history of the Pittman Act is one of concurrent development of surface and subsurface resources.[14] Congress enacted the Pittman Act to encourage the reclamation of arid lands in Nevada, to allow the use of the surface estate for agricultural purposes, and to encourage settlement and increase the State's population and tax base.

The legislative history of the Pittman Act gives us no reason to infer that when Congress included a provision in that Act reserving valuable mineral to the Federal Government, Congress intended to have sand and gravel pass to the patentee as a part of the surface estate.[15] The conclusion that sand and gravel is reserved to the United States by the reservation found in Pittman Act patents is consistent with the Congressional purpose of encouraging the concurrent development of the surface and subsurface estates and is in accord with "the established rule that land grants are construed favorably to the Government, that

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[14] This same Congressional policy was reflected in the mineral reservation provisions of the SRHA. *See Watt v. Western Nuclear, Inc.*, *supra*, at 52.

[15] See generally *United States v. Union Oil Company of California*, 549 F.2d 1271, 1279 (9th Cir. 1977), *cert. denied sub nom. Ottoboni v. United States*, 434 U.S. 930 (1977). A review of the legislative history of the SRHA led the court to conclude that the mineral reservation in that Act "is to be read broadly in light of the agricultural purpose of the grant itself, and in light of Congress's equally clear purpose to retain subsurface resources, particularly sources of energy, for separate disposition and development in the public interest." Thus, the court found that patents issued pursuant to the SRHA reserved to the United States geothermal resources underlying the patented lands – resources not likely contemplated when the SRHA was enacted in 1916.

nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it." *Watt v. Western Nuclear, Inc.*, *supra*, at 59, quoting *United States v. Union Pacific Railway Co.*, 353 U.S. 112, 116 (1957). *See also Andrus v. Charlestone Stone Products Co.*, 436 U.S. 604, 617 (1978); *Caldwell v. United States*, 250 U.S. 14, 20-21 (1919); *Northern Pacific Railway Co. v. Soderberg*, 188 U.S. 526, 534 (1903).

We previously noted that mineral material cannot be removed from lands administered by BLM without prior authorization in the form of a mineral material sales agreement or permit issued under the Materials Act of July 31, 1947, 30 U.S.C. §§ 601, 602 (1994) and Departmental regulations. Unauthorized removal of mineral materials from public lands is an act of trespass, and trespassers are liable for damages to the United States. 43 C.F.R. §§ 3603.1 and 9239.0-7; *Richard C. Neilson*, 129 IBLA 316, 324 (1994); *Richard Connie Neilson v. BLM*, 125 IBLA at 363. Having determined that the United States owns the sand and gravel, we find that Williams' removal of the sand and gravel without authorization from BLM constitutes an unintentional trespass, and Williams is liable for damages to the United States. Therefore, BLM must determine damages under 43 C.F.R. § 9239.0-8. See also 43 C.F.R. § 9239.1-3 and *CM Concepts of Nevada*, 126 IBLA 134, 139 (1993).[16]

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[16] We wish to reiterate that this is a case of first impression. The Bureau may wish to consider the policy it adopted following the Court's finding in *Watt v. Western Nuclear, Inc.*, *supra*. As noted in *Curtis Sand & Gravel Co.*, *supra*, at 147 n. 2, trespass damages were deemed actionable from and after July 21, 1983, 45 days after the June 6, 1983, Supreme Court decision in *Watt v. Western Nuclear,*

(continued...)

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

(...continued)

Inc. that "sand and gravel" was reserved mineral under an SRHA patent. With limited exceptions, trespass damages prior to July 21, 1983, were waived by BLM as an "exercise of prosecutorial discretion."

APPENDIX D

Pittman Underground Water Act of 1919

41 Stat. 293-95

Repealed, 78 Stat. 389 (1964)

CHAP. 77 – An Act To encourage the reclamation of certain arid lands in the State of Nevada, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized to grant to any citizen of the United States, or to any association of such citizens, a permit, which shall give exclusive right, for a period not exceeding two years, to drill or otherwise explore for water beneath the surface of not exceeding two thousand five hundred and sixty acres of unreserved, unappropriated, nonmineral, nontimbered public lands of the United States in the State of Nevada not known to be susceptible of successful irrigation at a reasonable cost from any known source of water supply: *Provided, however,* That not more than one such permit shall be issued to the same citizen or the same association of citizens within an area of forty miles square: *And provided further*, That said land shall not be fenced or otherwise exclusively used by the permittee except as herein provided: *And provided further*, That said land shall theretofore have been designated by the Secretary of the Interior as subject to disposal under the provisions of this act.

Sec. 2. That the Secretary of the Interior is hereby authorized on application or otherwise, to designate the lands subject to disposal under the provisions of this act: *Provided, however,* That where any person or association qualified to receive a permit under the provisions of this act shall make application for such permit upon land which has

not been designated as subject to disposal under the provisions of this act (provided said application is accompanied and supported by properly corroborated affidavit of the applicant, in duplicate, showing prima facie that the land applied for is of the character contemplated by this act), such application, together with the regular fees and commissions, shall be received by the register and receiver of the land district in which said land is located and suspended until it shall have been determined by the Secretary of the Interior, whether said land is actually of that character. That during such suspension the land described in the application shall not be disposed of; and if the land shall be designated under this act, then such application shall be allowed; otherwise it shall be rejected, subject to appeal.

Sec. 3. That any qualified applicant for a permit under section 1 of this Act shall file with the register or receiver of the land district in which said land is located the application for such permit and shall make and subscribe before the proper officer and file with said register or receiver an affidavit that such application is honestly and in good faith made for the purpose of reclamation and cultivation and not for the benefit of any other person or corporation, and that the applicant is not acting as agent for any person, corporation or syndicate in making such application, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land applied for or any part thereof, and that the applicant will faithfully and honestly endeavor to comply with all of the requirements of this Act, and shall pay to said register and receiver a filing fee of 1 cent per acre for each acre of land embraced in said application, and such applicant shall then be entitled to receive such permit after the lands embraced therein are designated as provided in section 2 of this Act.

Sec. 4. That such a permit shall be upon condition that the permittee shall begin operations for the development of underground waters within six months from the date of the permit and continue such operations with reasonable diligence until water has been discovered in the quantity hereinafter described, or until the date of the expiration of the permit. Upon the presentation at any time of proof satisfactory to the Secretary of the Interior that any permittee is not conducting said operations in good faith and with reasonable diligence, or has violated any of the terms of the permit, the Secretary shall forthwith cancel such permit, and such permittee shall not again be granted a permit under this Act.

Sec. 5. That on establishing at any time within two years from the date of the permit to the satisfaction of the Secretary of the Interior that underground waters in sufficient quantity to produce at a profit agricultural crops other than native grasses upon not less than twenty acres of land has been discovered and developed and rendered available for such use within the limits of the land embraced in any permit the said permittee shall be entitled to a patent for one-fourth of the land embraced in the permit, such area to be selected by the permittee in compact form according to the legal subdivisions of the public land surveys if the land be surveyed, or to be surveyed at his expense under rules and regulations established by the Secretary of the Interior if located on unsurveyed land.

Sec. 6. That the remaining area within the limits of the land embraced in any such permit shall thereafter be subject to entry and disposal only under "An Act to secure homesteads to actual settlers on the public domain," approved May 20, 1862, and amendments thereto, known as the one-hundred-and-sixty-acre homestead Act.

Sec. 7. That the receipts obtained from the sale of lands under the provisions of section 6 hereof shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the act of Congress approved June 17, 1902, known as the Reclamation Act.

Sec. 8. That all entries made and patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal and other valuable minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other valuable mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal. Any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all time to enter upon the lands entered or patented, as provided by this Act, for the purpose of prospecting for coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee, and shall be liable and shall compensate the entryman or patentee for all damages to the crops on such lands by reason of such prospecting. Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing

provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or undertaking to be in form and in accordance with rules and regulations prescribed by the Secretary of the Interior and to be filed with and approved by the register and receiver of the local land office of the district wherein the land is situate, subject to appeal to the Commissioner of the General Land Office; *Provided,* That all patents issued for the coal or other mineral deposits herein reserved shall contain appropriate notations declaring them to be subject to the provisions of this Act with reference to the disposition, occupancy, and use of the surface of the land.

Sec. 9. That the Secretary of the Interior is authorized to prescribe the necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act.

Approved, October 22, 1919.

APPENDIX E

Stock-Raising Homestead Act of 1916, 39 Stat. 862,

Repealed, 90 Stat. 2744 (1976)

Sec. 9. Reservation of coal and mineral rights

All entries made and patents issued under the provisions of this subchapter shall be subject to and contain a reservation of the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal. Any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented, as provided by this subchapter, for the purpose of prospecting for coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee, and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on such lands by reason of such prospecting. Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in

lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or undertaking to be in form and in accordance with rules and regulations prescribed by the Secretary of the Interior and to be filed with and approved by the officer designated by the Secretary of the Interior of the local land office of the district wherein the land is situate, subject to appeal to the Secretary of the Interior or such officer as he may designate: *Provided,* That all patents issued for the coal or other mineral deposits herein reserved shall contain appropriate notations declaring them to be subject to the provisions of this subchapter with reference to the disposition, occupancy, and use of the land as permitted to an entryman under the subchapter.

APPENDIX F

Surface Resources Act of 1955 (the Common Varieties Act), 30 U.S.C. § 611

Sec. 611. Common varieties of sand, stone, gravel, pumice, pumicite, or cinders, and petrified wood

No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however,* That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this subchapter and sections 601 and 603 of this title does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more. "Petrified wood" as used in this subchapter and sections 601 and 603 of this title means agatized, opalized, petrified, or silicified wood, or any material formed by the replacement of wood by silica or other matter.